

v. 2464

**No. 11555**

IN THE

**United States Circuit Court of Appeals**

FOR THE NINTH CIRCUIT

---

PAUL J. ZIEGLER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

**TRANSCRIPT OF RECORD**

(In Two Volumes)

VOLUME I

(Pages 1 to 330, Inclusive)

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

---

FILED

NOV 5 1947

PAUL P. O'BRIEN,

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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\*Page number appearing at foot of Certified Transcript.

In the District Court of the United States  
in and for the Southern District of California

Central Division

No. 19106 Crim.

UNITED STATES OF AMERICA,

Plaintiff

vs.

WEST COAST SUPPLY COMPANY, a partnership,  
and PAUL J. ZIEGLER,

Defendants

### INFORMATION

(U. S. C., Title 50, App., §633, et seq.; 2d War Powers Act of 1942; General Ration Order No. 8; 3d Revised Ration Order No. 3.)

The United States Attorney charges:

### COUNT ONE

(U. S. C., Title 50, App., §633, et seq.; 3d Revised Ration Order No. 3, §15.7(d))

On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed acts prohibited by Section 15.7(d) of Third Revised Ration Order No. 3, in that said defendants did wilfully and unlawfully issue and cause to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued to the Union Sugar Company a sugar

and on behalf of [J. F. T. O'C. Judge]  
ration check drawn by ^ the said West Coast Supply Com-  
and Paul J. Ziegler [J. F. T. O'C. Judge]  
pany ^ in the amount of Six Hundred Thousand (600,000)  
pounds of sugar, on the Union Bank and Trust Company  
of Los Angeles, when the West Coast Supply Company  
had a balance in its accounts at said bank in an amount  
insufficient to cover the amount of said check. [2]

## COUNT TWO

(U. S. C., Title 50, App., §633, et seq.; General Ration  
Order No. 8, §§~~2.8~~ and 2.9)

From on or about July 3, 1946, to on or about August  
17, 1946, in Los Angeles County, California, within the  
Central Division of the Southern District of California,  
defendants, West Coast Supply Company, a partnership,  
and Paul J. Ziegler, wilfully and unlawfully performed  
at

an act prohibited by Sections ~~2.8~~ and 2.9 of General Ration  
Order No. 8, in that said defendants did wilfully and un-  
lawfully receive a rationed commodity, Three Hundred  
and eighty Thousand (380,000) pounds of sugar from  
the Union Sugar Company, in exchange for a ration docu-

[J. F. T. O'C. Judge] and on behalf of  
ment, to wit, a sugar ration check drawn by ^ the said  
[J. F. T. O'C. Judge] and Paul J. Ziegler

West Coast Supply Company ^ in the amount of Six Hun-  
dred Thousand (600,000) pounds of sugar, on the Union  
Bank and Trust Company of Los Angeles, dated July 1.  
1946, and issued by the defendants, when said defendants  
knew and had reason to believe that the said ration docu-  
ment was not validly issued because the said West Coast

Supply Company did not have a sugar ration bank account in said bank with a balance therein sufficient to cover the amount of said check. [3]

### COUNT THREE

(U. S. C., Title 50, App. §633, et seq.; 3d Revised Ration Order No. 3, §15.7(d))

On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed acts prohibited by Section 15.7(d) of Third Revised Ration Order No. 3, in that said defendants did wilfully and unlawfully issue and cause to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued to the Spreckles Sugar [J. F. T. O'C. Judge] and on behalf of Company a sugar ration check drawn by ^ the said West [J. F. T. O'C. Judge] and Paul J. Ziegler Coast Supply Company ^ in the amount of Thirty Thousand (30,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, when the West Coast Supply Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check. [4]

### COUNT FOUR

(U. S. C., Title 50, App. §633, et seq.; General Ration Order No. 8, §§~~2.8~~ and 2.9)

On or about July 2, 1946, in Los Angeles County, California, within the Central Division of the Southern Dis-

trict of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and un-

Ac

lawfully performed an act prohibited by Sections 2.8 and 2.9 of General Ration Order No. 8, in that said defendants did wilfully and unlawfully receive a rationed commodity, Thirty Thousand (30,000) pounds of sugar from the Spreckles Sugar Company, in exchange for a ration

[J.F. T. O'C. Judge] and on behalf of

document, to wit, a sugar ration check drawn by ^ the said

[J. F. T. O'C. Judge] and Paul J. Ziegler

West Coast Supply Company ^ in the amount of Thirty Thousand (30,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, dated July 1, 1946, and issued by the defendants, when said defendants knew and had reason to believe that the said ration document was not validly issued because the said West Coast Supply Company did not have a sugar ration bank account in said bank with a balance therein sufficient to cover the amount of said check. [5]

### COUNT FIVE

(U. S. C., Title 50, App., §633, et seq.; 3d Revised Ration Order No. 3, §15.7(d))

On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed acts prohibited by Section 15.7(d) of Third Revised Ration Order No. 3, in that said defendants did wilfully and unlawfully issue and cause to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the

amount of outstanding checks drawn on that account, by issuing and causing to be issued to the Holly Sugar Company [J. F. T. O'C. Judge] and on behalf of company a sugar ration check drawn by  $\wedge$  the said West Coast and Paul J. Ziegler [J. F. T. Judge] Supply Company  $\wedge$  in the amount of Six Hundred and Sixty Thousand (660,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, when the West Coast Supply Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check. [6]

### COUNT SIX

(U. S. C., Title 50, App., §633, et seq.; General Ration Order No. 8, §§~~2.8~~ and 2.9)

From on or about July 1, 1946, to on or about August 30, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed

### Ac

an act prohibited by Sections ~~2.8~~ and 2.9 of General Ration Order No. 8, in that said defendants did wilfully and unlawfully receive a rationed commodity, Six Hundred and Sixty Thousand (660,000) pounds of sugar from the Holly Sugar Company, in exchange for a ration docu-

[J. F. T. O'C. Judge] and on behalf of ment, to wit, a sugar ration check drawn by  $\wedge$  the said [J. F. T. O'C. Judge] and Paul J. Ziegler West Coast Supply Company  $\wedge$  in the amount of Six Hun-



dred and Sixty Thousand (660,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, dated July 1, 1946, and issued by the defendants, when said defendants knew and had reason to believe that the said ration document was not validly issued because the said West Coast Supply Company did not have a sugar ration bank account in said bank with a balance therein sufficient to cover the amount of said check. [7]

### COUNT SEVEN

(U. S. C., Title 50, App., §633, et seq.; 3d Revised Ration Order No. 3, §15.7(d))

On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed acts prohibited by Section 15.7(d) of Third Revised Ration Order No. 3, in that said defendants did wilfully and unlawfully issue and cause to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued to the C & H Sugar Company a sugar      and on behalf of [J. F. T. O'C. Judge] ration check drawn by ^ the said West Coast Supply Company and Paul J. Ziegler [J. F. T. O'C. Judge]      ^ in the amount of Eighty Thousand (80,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, when the West Coast Supply Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check. [8]

## COUNT EIGHT

(U. S. C., Title 50, App., §633, et seq.; General Ration Order No. 8, §§~~2.8~~ and 2.9)

On or about July 5, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and un-

Ac

lawfully performed an act prohibited by Sections ~~2.8~~ and 2.9 of General Ration Order No. 8, in that said defendants did wilfully and unlawfully receive a rationed commodity, Eighty Thousand (80,000) pounds of sugar from the C & H Sugar Company, in exchange for a ration docu-

and on behalf of

ment to wit, a sugar ration check drawn by ^ the said and Paul J. Ziegler

West Coast Supply Company ^ in the amount of Eighty Thousand (80,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, dated July 1, 1946, and issued by the defendants, when said defendants knew and had reason to believe that the said ration document was not validly issued because the said West Coast Supply Company did not have a sugar ration bank account in said bank with a balance therein sufficient to cover the amount of said check.

JAMES M. CARTER

United States Attorney

ARTHUR LIVINGSTON

Assistant U. S. Attorney

Chief of Criminal Division

[Minutes: Monday, January 13, 1947]

Present: The Honorable Wm. C. Mathes, District Judge.

This cause coming on for arraignment and plea of defendants West Coast Supply Company and Paul J. Ziegler; W. H. Strong, Assistant U. S. Attorney, appearing as counsel for the Government; Chas. Carr, Esq., appearing as counsel for the co-partnership:

Defendant Ziegler, who is present on his own recognizance, states his true name is as set forth in the Information; and Attorney Carr states that the name of the defendant company is as set forth in the Information. Attorney Carr waives reading of the charge and it is ordered that the cause is hereby continued to Jan. 20, 1947, at 10 A. M. for plea. [10]

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[Minutes: Monday, January 20, 1947.]

Present: The Honorable Wm. C. Mathes, District Judge.

This cause coming on for (1) hearing motion of defendants filed Jan. 15, 1947, to dismiss the Information, (2) motion of the Government filed Jan. 16, 1947, to strike motion of defendants; (3) plea of each defendant; Wm. Strong, Assistant U. S. Attorney, appearing as counsel for the Government; Chas. H. Carr and Mildred L. Kluckhohn, Attorneys, appearing as counsel for the defendants; defendant Paul J. Ziegler being present on his own recognizance:

Attorney Carr presents (1) motion of defendants to dismiss the Information and the said motion is denied. Attorney Strong presents (2) motion of the Government to strike defendants' motion, and the said motion is denied.

In behalf of the defendant partnership Attorney Carr enters plea of not guilty to all eight counts. Defendant Ziegler pleads not guilty to all eight counts. It is ordered that the cause is hereby set for trial on Feb. 4, 1947, at 10 A. M., before Judge O'Connor. [13]

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[Title of District Court and Cause.]

#### NOTICE OF MOTION TO AMEND

Please Take Notice That on February 4, 1947, at 10:00 A. M., or as soon thereafter as counsel can be heard, the undersigned will move the Honorable J. F. T. O'Connor, Judge of the District Court of the United States, for the Southern District of California, Central Division, for permission to amend the Information in this cause heretofore filed, in each and every count, so that the words "\* \* \* a sugar ration check drawn by the said West Coast Supply Company \* \* \*", appearing in each and every count of said Information, shall read "\* \* \* a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler \* \* \*."

JAMES M. CARTER

United States Attorney

HOWARD V. CALVERLEY

Chief, Criminal Division

Assistant U. S. Attorney

WILLIAM STRONG

Assistant U. S. Attorney

Attorneys for Plaintiff.

By William Strong

Assistant U. S. Attorney

[Endorsed]: Filed Feb. 4, 1947. [14]

[Minutes: Tuesday, February 4, 1947.]

Present: The Honorable J. F. T. O'Connor, District Judge.

This cause coming on for jury trial of the defendants West Coast Supply Company and Paul J. Ziegler; Wm. Strong, Esq., Asst. U. S. Attorney, appearing for the Government; Charles H. Carr and Mildred L. Kluckhohn, Attorneys, appearing for the defendants:

It is ordered that a jury be impaneled for the trial of this cause, whereupon the clerk draws the names of the following twelve jurors, who take their seats in the jury box: Mrs. Lillian H. Atlee, Alice Martin Smith, Catherine Ward, Abraham Copeland, Cornelia Kimball Murray, Dolly Esther Merkley, Donald Charles Ingersoll, Edward B. Lilly, William E. Green, Harold Alfred Sterling, Homer Clay Smith, Arthur Norman Fernald.

Attorney Strong moves to amend the information and the motion is granted.

\* \* \* \* \* [15]

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[Minutes: Friday, February 7, 1947.]

Present: The Honorable J. F. T. O'Connor, District Judge.

This cause coming on for further jury trial of the defendants West Coast Supply Company and Paul J. Zeigler; William F. Strong, Esq., Asst. U. S. Attorney, appearing for the Government; Charles H. Carr, Esq., and

Mildred L. Kluckhohn appearing for the defendants; the defendant Zeigler and the jury being present and so stipulated:

\* \* \* \* \*

James R. Barry, heretofore sworn, is called in rebuttal as a witness for the Government and testifies on direct examination by Attorney Strong. The Government rests in rebuttal at 2:52 P. M.

At 3 P. M. the jury is admonished and excused until next Monday, at 1:30 P. M. In the absence of the jury Attorney Strong argues a point of law.

The Court states that no case has been made against the defendant West Coast Supply Co. or the other members of the partnership; and the motion of Attorney Carr for a directed verdict of acquittal against the said West Coast Supply Co. is granted as to all counts against the said defendant.

Attorney Carr renews his motion for a judgment of acquittal on each count of the Information against defendant Paul J. Zeigler and argues in support thereof, and the said motion is denied and exception noted.

At 3:30 P. M. court recesses. At 4:20 P. M. court reconvenes herein and all being present as before including Defendant Zeigler, the jury still being absent, the Court makes a statement relative to the proposed instructions to the jury, and a general discussion takes place relative to the proposed instructions to be given to the jury.

At 5:40 P. M. the Court declares a recess in this trial until 1:30 P. M., February 10, 1947. [16]



[Title of District Court and Cause.]

DEFENDANTS' REQUESTED INSTRUCTIONS

Come now the defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, in the above-entitled case now on trial and request the Court to give the following instructions to the jury.

CHARLES H. CARR

Attorney for Defendants, West Coast Supply Company,  
a partnership, and Paul J. Ziegler. [17]

Defendants' Requested Instruction No. 1

You are instructed that the law does not require the defendants to prove their innocence, which in many cases might be impossible, but, on the contrary, the law requires the Government to establish their guilt by legal evidence and beyond a reasonable doubt.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [18]

Defendants' Requested Instruction No. 2

The presumption of innocence goes with each defendant throughout the whole trial, and during your deliberations, and until you have reached a verdict, and this presumption of innocence outweighs and overbalances all suspicions and suppositions, and can only be destroyed by proof beyond a reasonable doubt.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [19]

## Defendants' Requested Instruction No. 3

You are instructed that the presumption of innocence with which the defendants are at all times clothed is not a mere form to be disregarded by you at your pleasure, but that it is an essential, substantial part of the law and binding on you in this case, and it is your duty in this case to give the defendants the full benefit of this presumption and to acquit them unless the testimony in the case convinces you of their guilt as charged beyond a reasonable doubt.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [20]

## Defendants' Requested Instructed No. 4

You are instructed that the Information on file herein is a mere charge or accusation against the defendants, and is not any evidence of the defendants' guilt, and no juror in this case should permit herself, or himself, to be, to any extent, influenced or prejudiced against the defendants because of or on account of such Information.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [21]

## Defendants' Requested Instruction No. 5

From time to time during this trial, counsel for the various defendants has interposed objections to evidence, some of which the Court has sustained and some has over-



ruled. With reference to this, I instruct you that it is not merely the privilege but the duty of an attorney to make such objections whenever he believes they are well founded in law. This occurs in the trial of every law suit, and you are not permitted to draw any inference unfavorable to the defendants from either the fact that the objections were made or from the rulings of the Court.

You must not consider for any purpose any evidence offered and rejected or which has been stricken by the Court. If the Court had admitted evidence for a limited purpose or limited its consideration to only one of the defendants, you should confine your consideration of that evidence within the limitations placed upon it by the Court. And you should consider that evidence against only that defendant respecting whom it was admitted—not against any defendant concerning whom it was excluded or rejected.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [22]

#### Defendants' Requested Instruction No. 6

The jury is the sole and exclusive judge of the effect and value of the evidence addressed to it and of the credibility of the witnesses who have testified in the case, and the character of the witnesses as shown by the evidence should be taken into consideration for the purpose of determining their credibility and the fact as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their degree of intelli-

gence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testified, his interest in the case, if any, or his bias or prejudice, if any, against one or any of the parties, by the character of his testimony, or by evidence affecting his character for truth and honesty or integrity or by contradictory evidence; and the jury is the exclusive judge of the credibility.

A witness may also be impeached by evidence that he made, at other times, statements inconsistent with his present testimony as to any matter material to the cause on trial, or that he has been convicted of crime.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [23]

#### Defendants' Requested Instruction No. 7

[Out See Par. 2 and 19]

Under the law no jury should, or has the right to convict a defendant of a crime upon mere suspicion, however strong, nor simply because there may be a preponderance of all the evidence in the case against him, nor merely because there is, or may be, strong reasons to suspect that he is guilty; neither are mere probabilities sufficient to warrant a conviction, nor is it sufficient that a greater weight of evidence supports the allegations of the Information, if it does; nor is it sufficient upon the doctrines of chance that it is more probable that the defendant is guilty. Before the defendants can be lawfully convicted, they must be proven to be guilty fairly and satisfactorily beyond all reasonable doubt, so that there is no reason-

able hypothesis upon which they can be considered innocent when all the evidence in the case is considered together.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [24]

### Defendants' Requested Instruction No. 8

Neither the filing of an Information, nor any allegation thereof, raises any presumption whatever of the defendants' guilt, but the burden of proof is on the Government, and the law presumes the defendants innocent until proven guilty beyond a reasonable doubt, and this rule applies to every material element of the offense charged. A reasonable doubt is a doubt which is reasonable in view of all the evidence, and if, after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied of the defendants' guilt, you have a reasonable doubt; that if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendants' guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [25]

## Defendants' Requested Instruction No. 9

If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendants' innocence you must do so, and, in that case, find the defendants not guilty. You cannot find the defendants guilty unless the evidence before you is inconsistent with and excludes every other reasonable hypothesis except that of guilt. The hypothesis of guilt should flow naturally from facts proved, and be consistent with them all. You cannot find the defendants guilty unless the testimony in the case convinces you of their guilt as charged beyond a reasonable doubt.

Where the evidence is as consistent with the innocence of a defendant as with his guilt, it is the duty of the jury to acquit.

If the evidence supports two theories—both reasonable—one consistent with the guilt of an accused and the other consistent with his innocence, it is the duty of the jury to acquit.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [26]

## Defendants' Requested Instruction No. 10

A witness false in one part of his, or her, testimony is to be distrusted in others; that is to say, the jury may reject the whole of the testimony of a witness who has willfully sworn falsely as to a material point; and the jury,

being convinced that a witness has stated what was untrue, not as a result of mistake or inadvertence, but willfully and with the design to deceive, must treat all of his, or her, testimony with distrust and suspicion, and reject all unless they shall be convinced that, notwithstanding the base character of the witness, he or she has in other particulars sworn to the truth.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [27]

#### Defendants' Requested Instruction No. 11

You should not consider as evidence any statement of counsel made during the trial, unless such statement is made as an admission or stipulation conceding the existence of a fact, or facts. You have not to consider as evidence or law, any argument, comment or suggestion made by counsel during the trial of this action.

Such statements, arguments, comments or suggestions are not evidence and must not be considered as such by you. You must not consider for any purpose any evidence offered and rejected, or which has been stricken out by the Court; such evidence that has been introduced before you and the inferences which you may deduce therefrom as stated in these instructions and upon the law as given you in these instructions.

Given: J. F. T. O'C., J. .

Refused: .....

Given as Modified: .....

[OK] [28]

## Defendants' Requested Instruction No. 12

You cannot find a defendant guilty upon any count of the Information unless you are convinced, beyond a reasonable doubt, by the evidence of the truth of every material allegation of such count.

Given: in my instructs J. F. T. O'C., J.

Refused: .....

Given as Modified: ..... [29]

## Defendant's Requested Instruction No. 13

The Court advises you to find the defendant, West Coast Supply Company, a partnership, not guilty on each and every count of the Information on the ground and for the reason that the Court deems the evidence insufficient to warrant conviction.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: ..... [30]

## Defendants' Requested Instruction No. 14

The Court advises you to find the defendant, Paul J. Ziegler, not guilty on each and every count of the Information on the ground and for the reason that the Court deems the evidence insufficient to warrant conviction.

Given: .....

Refused: J. F. T. O'C., J.

Given as Modified: .....

[No No] [31]



## Defendants' Requested Instruction No. 15

There are two kinds of evidence by which the Government may sustain charges laid in the Information; the one is known as direct and positive, the other as indirect or circumstantial. Evidence is said to be direct and positive when the witnesses have testified of their own knowledge to matters having a direct bearing upon the issues in the case. Evidence is said to be indirect or circumstantial on the other hand when the witnesses testified to matters having only an indirect or circumstantial relationship to the issues in the case.

The prosecution depends in this case for conviction upon circumstantial evidence.

While you may show what a man does by direct evidence of eye-witnesses, the only way you can show what he intends and what his purpose is or was is by circumstantial evidence.

The law requires that all of the circumstances necessary to show guilt must themselves be shown by evidence beyond a reasonable doubt; that these circumstances must all be consistent with one another; that they must all be consistent with a defendant's guilt and that they must all be inconsistent with any reasonable theory of his innocence, and inconsistent with every other reasonable hypothesis except that of guilt.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[OK] [32]

## Defendants' Requested Instruction No. 16

You are instructed that the word "issue," within the meaning of each count of the Information, means the delivery of a completed sugar ration check to the person to whose account the check is made payable; and that no check which has been altered may be issued. Even though you may be convinced, beyond a reasonable doubt, that defendant, Paul J. Ziegler, in fact, signed his name to the various sugar ration checks alleged in the Information, you are instructed that defendant, Paul J. Ziegler, could not have issued or caused said checks to have been issued if you find that they were altered by anyone other than the defendant prior to, at the time of or after delivery to the person to whose account the checks were made payable.

Third Revised Ration Order No. 3, Sec. 24-1 (c)  
(15).

Third Revised Ration Order No. 3, Sec. 15.7 (f)  
(1).

Third Revised Ration Order No. 3, Sec. 15.7 (f)  
(2).

Given: .....

Refused: J. F. T. O'C., J.

Given as Modified: .....

[No] [33]

## Defendants' Requested Instruction No. 17

You are instructed that a sugar ration check may be issued only by a depositor—that is, by a person who has a ration bank account, against his account. Even if you should find beyond a reasonable doubt that defendant,



Paul J. Ziegler, in fact, did issue or cause said sugar ration checks to be issued, you cannot find ~~defendant~~ Paul J. Ziegler guilty unless you are convinced, beyond a reasonable doubt, that he is either a depositor or that he was authorized by defendant West Coast Supply Company to issue checks to be drawn on its account.

Third Revised Ration Order No. 3, Sec. 24.1 (c)  
(5).

Third Revised Ration Order No. 3, Sec. 24.1 (c)  
(9).

Third Revised Ration Order No. 3, Sec. 15.7 (a)  
(b).

Given: .....

Refused: .....

Given as Modified: .....

[Out Withdrawn by def.] [34]

### Defendants' Requested Instruction No. 18

In each count of the Information, defendants are alleged to have "wilfully" done the acts and things of which they are accused. As so used, the term "wilfully" denotes an act which is premeditated, deliberate, intentional and knowingly done.

In other words, these are offenses requiring a specific intent, and, unless you find beyond a reasonable doubt that it is a moral certainty that the defendants had such specific intent, you must acquit them. The intent on the part of the defendants may be shown by their acts and declarations and by the circumstances surrounding their acts, which, when taken together, must prove beyond a

reasonable doubt that the defendants had the specific intent to wilfully commit acts denounced under the law.

*United States v. Fish, Inc.*, 1946, C.C.A. 2, 154 F. (2d) 798.

*Moore v. United States*, 1945, C.C.A. 10, 150 F.(2d) 323, e.d. 66 S.Ct. 52.

*Zimberg v. United States*, 1944, C.C.A. 1, 142 F. (2d) 132, 137.

*Flannagan v. United States*, 1944, C.C.A. 9, 145 F.(2d) 740.

*United States v. Renken*, 1944, D.C., S.C., 55 F.Supp. 1.

Given: J. F. T. O'C., J.

Refused:.....

Given as Modified:..... [35]

#### Defendants' Requested Instruction No. 19

You are instructed that the Office of Price Administration and the powers exercised by it automatically terminated on June 30, 1946 upon the expiration of the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended, and that it was not until July 25, 1946 that any legislation existed extending price control, the operation of the Office of Price Administration and the exercise of its powers. [Out]

However, on June 30, 1946, on the day the operation of the Office of Price Administration and its powers terminated under the Emergency Price Control Act and the Stabilization Act, President Truman signed Executive Order No. 9745 by which he purported to continue the power to ration on an interim basis pending legislative

action to extend the operation of the Office of Price Administration. Although signed by the President on June 30, 1946, Executive Order No. 9745 was not filed with the Division of Federal Register, as required by statute, until July 1, 1946 at 10:32 a.m., and was not published in the Federal Register until July 2, 1946.

Title 50, U.S.C.A., Sec. 966.

92nd Congressional Record 8092.

11 F.R. 7327.

79th Congress, Second Session, Chapter 671, Public Law 548.

Given:.....

Refused:.....

Given as Modified:.....

[Pass See Gov't—37 New] [36]

Defendants' Requested Instruction No. 20

In each count of the Information, defendants are alleged to have "wilfully" and "unlawfully" done the acts and things of which they are accused. In this connection, you are instructed that there is a very real and vital difference between simply doing an act and doing an act wilfully. In the first case no intent is involved while in the second case of "wilfully" doing the act, the elements of guilty knowledge and specific intent to do that which the law denounces are involved and constitute the gist of the offense.

United States v. Fish, Inc., 1946, C.C.A. 2, 154  
F.(2d) 798.

Moore v. United States, 1945, C.C.A. 10, 150  
F.(2d) 323, e.d. 66 S.Ct. 52.

*Zimberg v. United States*, 1944, C.C.A. 1, 142  
F.(2d) 132, 137.

Given: J. F. T. O'C., J.

Refused:.....

Given as Modified:..... [37]

### Defendants' Requested Instruction No. 21

Since defendants are charged with "wilfully" doing the acts complained of, one of the essential elements of all of the offenses charged in the Information is knowledge on the part of the defendants that they were doing an act denounced by the law. Unless you are convinced beyond a reasonable doubt that defendants were aware of and knew of the existence of Executive Order No. 9745, purporting to extend the power to ration sugar beyond June 30, 1946, then you must acquit the defendants.

*Yakus v. United States*, 1944, 321 U.S. 414, 435.

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Not Given] [38]

### Defendants' Requested Instruction No. 22

You are further instructed in this connection that, upon publication of an Executive Order of this kind in the Federal Register, the law of the United States creates a presumption that all persons affected by the order have knowledge of such order, which presumption is a rebuttable one. If, therefore, you find beyond a reasonable doubt that the acts and things of which defendants are accused of doing were done by said defendants, and if you

further find that, at the time said acts and things were done by said defendants, they did not know that the President had signed Executive Order No. 9745 and were unaware that sugar rationing had continued beyond June 30, 1946, then you must find that the presumption of notice of said Executive Order No. 9745 to defendants has been rebutted.

Title 44, U.S.C.A., Sec. 307.

Flannagan v. United States, 1944, C.C.A. 9, 145  
F.(2d) 740.

Kempe v. United States, 1945, C.C.A. 8, 151  
F.(2d) 680.

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Not Given] [39]

### Defendants' Requested Instruction No. 23

You are instructed that the Government and the defendants are entitled to the individual opinion of each juror on the issue of fact in this case. It is the duty of each of you to consider and weigh all the evidence in the case, and from such evidence to determine, if you can, the question of guilt or innocence of the defendants, or any of them. When you have so determined that question, you should not be influenced in giving your verdict by the mere fact that any number or all of your fellow jurors may have reached a different conclusion. If, after careful consideration of all the evidence, your mind is fairly made up, and you are convinced that you are right, it will be your duty to stand by your decision. But

each juror should freely and fairly discuss with his fellow jurors the evidence and the deductions to be justly drawn therefrom; this it is his duty to do. If, after such a full and fair discussion with them, any juror is still satisfied that his decision is right, he should say so by his verdict. If, on the other hand, after such full and fair discussion, any juror is satisfied that his original decision was wrong, then he should unhesitatingly abandon such decision, and render his verdict according to such final decision.

Given: in substance J. F. T. O'C., J.

Refused:.....

Given as Modified:..... [40]

#### Defendants' Requested Instruction No. 24

The Information upon which the defendants are being tried contains 8 counts. Counts 1, 3, 5 and 7 thereof charge defendants, and each of them, with having wilfully and unlawfully issued and caused to be issued a sugar ration check, each for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued a sugar ration check drawn by and on behalf of said West Coast Supply Company and Paul J. Ziegler when the West Coast Supply Company had a balance in its account in an amount insufficient to cover the amount of each of said checks. The amount of the check in count 1 is 600,000 pounds of sugar; in count 3, 30,000 pounds of sugar; in count 5, 660,000 pounds of sugar; and in count 7, 80,000 pounds of sugar.



The Government is required to prove each and every material allegation of each count of the Information beyond a reasonable doubt. Unless every material allegation of the charge is proved against a defendant, you must acquit that defendant.

Given: J. F. T. O'C., J.

Refused:.....

Given as Modified:.....

[Given] [41]

Defendants' Requested Instruction No. 25

Counts 2, 4, 6 and 8 charge that defendants wilfully and unlawfully received a rationed commodity, to wit, sugar, in exchange for a sugar ration check drawn by and on behalf of the West Coast Supply Company and Paul J. Ziegler on the Union Bank and Trust Company of Los Angeles, and issued by the defendants when the said defendants knew and had reason to believe that the check was not validly issued because the West Coast Supply Company did not have a sugar ration bank account in said bank with a balance sufficient to cover the amount of the check.

Count 2 charges the receipt of 380,000 pounds of sugar; count 4, 30,000 pounds of sugar; count 6, 660,000 pounds of sugar; and count 8, 80,000 pounds of sugar.

The Government is required to prove each and every material allegation of each count of the Information beyond a reasonable doubt. Unless every material allegation of the charge is proved against a defendant, you must acquit that defendant.

Given: J. F. T. O'C., J.

Refused:.....

Given as Modified:.....

[G] [42]



## Defendants' Requested Instruction No. 26

If, from all of the evidence, you should conclude that the name West Coast Supply Company was not placed upon Exhibit 6, which is the check set forth in count 1; Exhibit 5, which is the check set forth in count 3; Exhibit 4, which is the check set forth in count 5; and Exhibit 3, which is the check set forth in count 7, by the defendant Paul J. Ziegler, then you must find that said check or checks is not a ration check as defined by Sec. 24.1 of the Third Revised Ration Order No. 3. In order to be a ration check, such check must be drawn by a depositor against his account and the evidence in this case discloses that Paul J. Ziegler was not a depositor.

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Denied] [43]

## Defendants' Requested Instruction No. 27

If you determine from all of the evidence that the name of West Coast Supply Company was placed upon any of the checks set forth in counts 1, 3, 5 and 7 after said checks were delivered, then said check or checks were not issued as required by paragraph 15 of Sec. 24.1 of Third Revised Ration Order No. 3, which defines "issue" to mean the delivery of a completed check.

Furthermore, paragraph (f) of Sec. 15.7, Third Revised Ration Order No. 3, requires a person who holds a check which has been altered shall return it to the issuer with the request for a new check. Thus, if you find that the name West Coast Supply Company was placed upon the checks after delivery of said checks, then it

was the duty of the broker or seller to return said checks to the issuer.

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Not] [44]

Defendants' Requested Instruction No. 28

You should not be influenced in reaching your verdict in this case solely by reason of the amount of sugar involved, for you must, in order to convict a defendant of any count of the Information, find that each and every material allegation thereof has been proved beyond a reasonable doubt.

Given: J. F. T. O'C., J.

Refused:.....

Given as Modified:.....

[OK] [45]

Defendants' Requested Instruction No. 29

You are instructed that, if you find from the evidence that at the time any or all of the sugar ration checks alleged in counts 1, 3, 5 and 7 of the Information were issued, there were sufficient ration credits available in any or all of the accounts of the West Coast Supply Company in the Union Bank & Trust Company to cover said sugar ration check or checks, then you must find that said check or checks were validly issued and

Paul J. Ziegler

acquit the defendants on the counts relating to said checks.

Given:.....

Refused:.....

Given as Modified: J. F. T. O'C., J.

[OK] [46]

## Defendants' Requested Instruction No. 30

You are instructed that in determining whether or not there was criminal intent on the part of Paul J. Ziegler, which is an essential element in the offenses here charged, you should consider whether or not he honestly and in good faith sought the advice of his attorney upon discovering the existence of Executive Order 9745, and if you believe that the defendant, Paul J. Ziegler, after laying all the facts before his attorney in good faith, did the acts of which he is accused, relying upon that advice and believing it to be correct and believing he had a right to do said acts, you cannot convict Paul J. Ziegler of the offenses with which he is charged, which offenses involve wilful and unlawful intent, even if such advice were an inaccurate construction of the law.

Williamson v. United States, 28 S.Ct. 163, 173.

Miller v. United States, C.C.A. 4, 277 F. 721.

Given:.....

Refused: In substance. See my instruction given. J. F. T. O'C., J.

Given as Modified:.....

[Out Pass] [47]

## Defendants' Requested Instruction No. 31

No personal feeling or prejudice must be allowed in any manner to influence or direct you in connection with any issue in this Information. It is of no consequence whether you may or may not approve of the appearance, conduct or general bearing of the defendant. If, in your opinion, having heard all the testimony, you are not able to say that after a full and fair comparison of the evidence that you believe that the defendant is guilty to a moral

certainty and beyond a reasonable doubt, you are instructed and directed to return a verdict of not guilty.

Given:.....

Refused:.....

Given as Modified:.....

[Given. J. F. T. O'C., J.] [48]

Defendants' Requested Instruction No. 32

Where, as here, a specific intent is a part of an offense, before a principal may be convicted by reason of the acts of an agent, it must be shown beyond a reasonable doubt, first, that the agent was acting for and on behalf of the principal and not in his individual capacity, and, second, that the principal knowingly and intentionally commanded, aided, advised or encouraged the act committed by the agent or assented to it.

Paschen v. United States, 1934, C.C.A. 7, 70 F.(2d) 491, 503.

Nobile v. United States, 1922, C.C.A. 3, 284 F. 253, 255.

United States v. Food and Grocery Bureau of Southern California, 1942, D.C., Calif., 43 F. Supp. 966.

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Out. No] [49]

Defendants' Requested Instruction No. 33

In determining whether or not there was wilful or criminal intent on the part of the defendant, which is an essential element of the offense charged and which

must be proved beyond a reasonable doubt, you should consider whether or not he, in good faith, sought the advice of his attorney respecting the status of sugar rationing by the O.P.A. as a result of the termination of the Emergency Price Control Act on June 30, 1946, and if the defendant, after laying all the facts before his attorney, in good faith did the acts of which he is accused relying upon that advice believing it to be correct and believing that sugar rationing was no longer in effect, then the advice and the good faith of the defendant is a defense to be considered by the jury even if such advice were an inaccurate interpretation of the law.

Generally speaking, advice of counsel is not an excuse for a violation of law, but where the question, as in this case, is one of intent, the advice of counsel and the good faith of the defendant is a defense to be considered by the jury.

Williamson v. United States, 28 S.Ct. 163, 173.

Miller v. United States, C.C.A. 4, 277 F. 721.

Given:.....

Refused:.....

Given as Modified:.....

[Out. See instruction given. J. F. T. O'C., J.] [50]

Defendants' Requested Instruction No. 34

Paragraph 15 of Sec. 24.1 of Third Revised Ration Order No. 3 provides:

“ ‘Issue’ when used with respect to a check, means the delivery of a completed check to the person to whose account the check is made payable.”

Paragraph 8 of the same section provides:

“ ‘Delivery’ means the transfer of physical possession \* \* \*.”

In order to find that the defendant, Paul J. Ziegler, issued the checks as charged under each count of the Information, the evidence must convince you beyond a reasonable doubt that said checks were completed when they were delivered to the person to whose account they were made payable.

Third Revised Ration Order No. 3, Sec. 24.1  
(c)(15).

Third Revised Ration Order No. 3, Sec. 24.1  
(c)(8).

Given: .....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Refused] [51]

#### Defendants' Requested Instruction No. 35

Paragraph (f), Sec. 15.7 of Third Revised Ration Order No. 3 provides that no check which has been altered may be issued, transferred or deposited, and that a person who holds such a check shall return it to the issuer. Although the defendant, Paul J. Ziegler, may have signed his name to the various alleged sugar ration checks set forth in the Information, in order for you to find that he issued the checks within the meaning of Third Revised Ration Order No. 3, the evidence must convince you that the checks were not altered by anyone after delivery of the checks by Paul J. Ziegler.

Third Revised Ration Order No. 3, Sec. 15.7 (f).

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Not G.] [52]



## Defendants' Requested Instruction No. 36

Sec. 24.1 (c)(5) of Third Revised Ration Order No. 3 provides:

“ ‘Check’ means a sugar ration check, in the form prescribed by the Office of Price Administration, drawn by a depositor against his account and made payable to the account of a named person.”

Paragraph 9 of the same section provides:

“ ‘Depositor’ means a person who has a ration bank account. \* \* \* ”

It is a material part of the charge in counts 1, 3, 5 and 7 that defendant, Paul J. Ziegler, issued a sugar ration check, or checks. In order for the Government to sustain the proof respecting this material ingredient, it is necessary that the checks referred to in each count not only be signed by Paul J. Ziegler, but the proof must show that they were drawn by him as a depositor against his account.

Unless you find beyond a reasonable doubt that he was a depositor and the checks were drawn against his account, you must acquit on those counts.

Third Revised Ration Order No. 3, Sec. 24.1 (c)(5).

Third Revised Ration Order No. 3, Sec. 24.1 (c)(9).

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Not Given. Evidence shwed Paul J. Ziegler had no account. J. F. T. O'C., J.] [53]



## Defendants' Requested Instruction No. 37

On June 29, 1946, the President of the United States vetoed the bill passed by Congress which would have extended the Emergency Price Control Act of 1942, and on June 30, 1946, that Act terminated and was no longer law. On June 30, 1946, all powers derived by the Office of Price Administration from the Emergency Price Control Act of 1942 terminated. On June 30, 1946, President Truman promulgated and signed Executive Order No. 9745 which provided that the Office of Price Administration was directed to continue to exercise all powers and functions which did not terminate by reason of the termination of the Emergency Price Control Act and such powers that were delegated to the O.P.A. pursuant to the Second War Powers Act.

While this Executive Order was signed by the President on June 30, 1946, it was not filed with the Division of Federal Register, Washington, D. C., as required by statute, until July 1, 1946 at 10:32 a.m., and was not published in the Federal Register until July 2, 1946.

Title 50, U.S.C.A., Sec. 966.

92nd Congressional Record 8092.

11 F.R. 7327.

79th Congress, Second Session, Chapter 671, Public Law 548.

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Refused. Sub. for old 19.] [54]

## Defendants' Requested Instruction No. 38

Under the Federal Register Act, an Executive Order promulgated by the President of the United States is not valid as against any person who has not had actual knowledge thereof until the order is filed with the Division of the Federal Register in Washington, D. C. Upon filing and publication in the Federal Register, such publication creates a rebuttable presumption of notice to persons subject thereto or affected thereby.

The defendant, Paul J. Ziegler, has offered evidence in this case to rebut the presumption that he had notice or knowledge of the contents of Executive Order No. 9745. It is, therefore, for the jury to determine whether or not defendant has rebutted this presumption.

Title 44, U.S.C.A., Sec. 307.

Flannagan v. United States, 1944, C.C.A. 9, 145  
F.(2d) 740.

Kempe v. United States, 1945, C.C.A. 8, 151  
F.(2d) 680.

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[No] [55]

## Defendants' Requested Instruction No. 39

One of the specific ingredients of the offense charged in each and every count of the Information is that of wilful intent to do the acts charged. While under the Federal Register Act the filing of an Executive Order creates a rebuttable presumption of notice to the defendant, the defendant may rebut the presumption that he had actual knowledge of the Executive Order.

If you find that the acts and things of which defendant is accused of doing were done by him, and you further find that, at the time said acts and things were done by the defendant, he did not have knowledge that Executive Order 9745 had been signed by the President, and he did not know that sugar rationing had been continued beyond June 30, 1946, then you should find that the presumption of notice of said Executive Order 9745 to defendant has been rebutted.

Title 44, U.S.C.A., Sec. 307.

Flannagan v. United States, 1944, C.C.A. 9, 145 F.(2d) 740.

Kempe v. United States, 1945, C.C.A. 8, 151 F. (2d) 680.

Given:.....

Refused: J. F. T. O'C., J.

Given as Modified:.....

[Not Given] [56]

#### Defendants' Requested Instruction No. 40

You are instructed that the evidence adduced at the trial was insufficient to prove that defendant, Paul J. Ziegler, was, at any of the times mentioned in any or all counts of the Information, a partner of West Coast Supply Company. You will accordingly find, therefore, that Paul J. Ziegler was not, at any of the times mentioned in the Information, a partner of said West Coast Supply Company.

Given: J. F. T. O'C., J.

Refused: .....

Given as Modified: .....

[G] [57]

I instruct you that if the defendant, Paul J. Ziegler, honestly and in good faith sought the advice of a lawyer as to what he might lawfully do in the matter involved in this action and fully and honestly laid all of the facts before his counsel, and in good faith and honestly followed that advice, relying upon it and believing it to be correct, had only intended that his acts should be lawful, he could not be found guilty of this offense which involves willful and unlawful intent, even if such advice were an inaccurate construction of the law. But, on the

wilfully

other hand, no man can ~~lawfully~~ and knowingly violate the law and excuse himself from the consequences thereof by pleading that he followed the advice of counsel.

(Williamson v. United States, 207 U. S. 453.) [58]

Application of law - - - Depends Upon Facts

The Court has given you instructions embodying such rules of law as may be necessary to assist you in arriving at a verdict. As to some of these instructions, their application depends upon the light in which you view the evidence.

The fact that the court has given you instructions as to particular rules of law must not be taken by you as an indication that such rules are necessarily applicable to the cause on trial, or as indicating that the court considers them necessarily applicable. Where there is a conflict of evidence, the question as to whether a particular rule of law is applicable depends frequently and solely upon the conclusion as to what the facts are, and the jury are the sole judges of the facts.

If any instruction is applicable only if a particular situation or state of facts exists, and if you find that no such situation or state of facts exists, then you should not take such instruction into consideration in your deliberation.

People v. Spriac, 262 Pac. 795, 799 (Cal)

[Given J. F. T. O'C., Judge.]

[Endorsed]: Filed Feb. 13, 1947. [59]

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[Title of District Court and Cause.]

### VERDICT OF THE JURY.

We, the jury in the above entitled case, find the defendant Paul J. Ziegler,

Guilty as charged in the first count of the Information;

Guilty as charged in the second count of the Information;

Guilty as charged in the third count of the Information;

Guilty as charged in the fourth count of the Information;

Guilty as charged in the fifth count of the Information;

Guilty as charged in the sixth count of the Information;

Guilty as charged in the seventh count of the Information; and

Guilty as charged in the eighth count of the Information.

Dated: Los Angeles, Calif., February 11, 1947.

IVAN W. NEWPORT

Foreman of the Jury

[Endorsed]: Filed Feb. 11, 1947. [62]

[Title of District Court and Cause.]

NOTICE OF RENEWAL OF MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 29, RULES OF CRIMINAL PROCEDURE.

To Plaintiff, United States of America; and to James M. Carter, United States Attorney for the Southern District of California, and to Howard V. Calverly and William Strong, Assistant United States Attorneys for Said District, 600 Federal Building, Los Angeles, California, Attorneys for Plaintiff:

Please Take Notice that the defendant in this cause, Paul J. Ziegler, will, in the United States District Court for the Southern District of California, Central Division, on February 18, 1947, at 10:00 a. m., or as soon thereafter as the Motion can be heard in the court room of the Hon. J. F. T. O'Connor, renew his Motion for Judgment of Acquittal under Rule 29, Rules of Criminal Procedure.

CHARLES H. CARR

Attorney for Defendant, Paul J. Ziegler [66]

[Title of District Court and Cause.]

RENEWAL OF MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 29 OF RULES OF CRIMINAL PROCEDURE

Defendant, Paul J. Ziegler, renews his Motion for Judgment of Acquittal to each and every count of the Information.

CHARLES H. CARR

Attorney for Defendant, Paul J. Ziegler [67]



Received copy of within Notice of Motion, Motion, and Points and Authorities this 17th day of February, 1947. James M. Carter, Attorney for Plaintiff, by Bonkus.

[Endorsed]: Filed Feb. 17, 1947. [68]

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[Minutes: Tuesday, February 18, 1947.]

Present: The Honorable J. F. T. O'Connor, District Judge.

This cause coming on for hearing on motion of Paul J. Zeigler, defendant, filed February 17, 1947, in arrest of judgment; hearing on renewal of motion for judgment of acquittal under Rule 29, or in the alternative for a new trial; Wm. Ritzi, Esq., Asst. U. S. Attorney, appearing for the Government; Charles H. Carr, Esq., and Mildred Kluckhohn appearing for the defendant; the defendant Zeigler being present:

Attorney Carr argues; Attorney Ritzi argues; the Court makes a statement and orders all motions denied and exception noted.

Attorney Ritzi makes a statement. The defendant Zeigler makes a statement. Attorney Carr makes a further statement.

The Court pronounces judgment against the defendant as follows:

\* \* \* \* \* [69]



District Court of the United States  
Southern District of California, Central Division  
No. 19106

Criminal information in eight counts for violation of  
U. S. C., Title 50 App. Sec. 633 et seq. 2nd War  
Powers Act of 1942, etc.

UNITED STATES

v.

PAUL J. ZIEGLER

JUDGMENT AND COMMITMENT IN EVENT  
PROBATION IS VIOLATED

On this 18th day of February, 1947, came the United States Attorney, and the defendant Paul J. Ziegler appearing in proper person, and with his attorney Charles H. Carr and Mildred Kluckhohn, and,

The defendant having been convicted on verdict of jury of the offense charged in the Information in the above-entitled cause, to wit: violation of Title 50, App. 633, et seq., 2nd War Powers Act of 1942, General Ration Order No. 8, 3d Revised ration order No. 3, all as set forth in the eight counts of the Information, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of three months in an institution of the County Jail type on each of the

eight (8) counts of the Information, sentences on all counts to begin and to run concurrently; and it is further ordered by the court that the execution of the jail sentences be suspended and that defendant be placed on probation for sixty (60) days on each of said counts, the terms of probation to begin and to run concurrently, on condition that said defendant shall not violate any law of the United States or of the State of California during that time. Defendant is also fined the sum of Two thousand five hundred dollars (\$2500.00) on each of the eight (8) counts of the Information, making a total fine of twenty thousand dollars (\$20,000.00).

It Is Further Ordered that if the defendant desires to appeal, the condition of appeal will be that one half of the said fines imposed upon defendant shall be deposited in the registry of the court, and no further order will be required of the defendant.

Defendant is allowed a stay of execution on the fines to 2/28/47, noon.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein. In the event defendant violates the terms of probation.

(Signed) J. F. T. O'CONNOR  
United States District Judge.

A True Copy. Certified this 18th day of February, 1947.

(Signed) EDMUND L. SMITH  
Clerk.

(By) Francis E. Cross  
Deputy Clerk. [70]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and Address of Appellant:

Paul J. Ziegeler, 1654 Long Beach Avenue, Los Angeles, California.

Name and Address of Appellant's Attorney:

Charles H. Carr, 675 Subway Terminal Building, 417 South Hill Street, Los Angeles, California.

Offense:

Title 50 U. S. Code App. Sec. 633, et seq. Second War Powers Act of 1942; General Ration Order No. 8, Sec. 2.9; and Third Revised Ration Order No. 3, Sec. 15.7(d).

Concise Statement of Judgment or Order Giving Date and Any Sentence: [78]

Defendant, having been found guilty on eight counts of the Information, the Court on February 18, 1947, pronounced judgment as follows:

The Court ordered Defendant committed to the custody of the Attorney General for imprisonment for a period of three months in an institution of the County Jail type on each of the eight counts of the Information, sentences on all counts to begin and to run concurrently; it was further ordered by the Court that the execution of the jail sentences be suspended and Defendant be placed on probation for a period of sixty days on each of said counts, the terms of probation to begin and to run concurrently, on condition that said Defendant shall not violate any law of the United States or of the State of California during that time.

The Court also fined Defendant the sum of \$2,500.00 on each of the eight counts of the Information, making a total fine of \$20,000.00.

It was further ordered that in the event Defendant desires to appeal, the condition of appeal will be that one-half of the said fines imposed upon Defendant shall be deposited in the Registry of the Court, and no further order will be required of the Defendant.

The above Judgment was entered February 18, 1947.

The above named appellant, Paul J. Ziegler, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the above Judgment.

Dated this 25th day of February, 1947.

CHARLES H. CARR

Attorney for Appellant

[Endorsed]: Filed Feb. 25, 1947. [74]

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[Title of District Court and Cause.]

STIPULATION FOR TRANSMITTAL OF ORIGINAL EXHIBITS TO NINTH CIRCUIT COURT OF APPEALS

It is hereby stipulated by and between Counsel for Defendant, Paul J. Ziegler, and Counsel for Plaintiff, United States of America, subject to order of the Court and pursuant to Rule 75(i), Federal Rules of Civil Procedure, that all of the original exhibits in the above entitled case may be withdrawn from the files of this Court and forwarded by the Clerk of the United States Dis-

trict Court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit for inspection by the Appellate Court and in lieu of copies thereof, and that said original exhibits may be returned to the Clerk of the United States [75] District Court after they have served their purpose.

June 2, 1947.

CHARLES H. CARR

Attorney for Defendant

WILLIAM STRONG

Attorney for Plaintiff

[Endorsed]: Filed Jun. 4, 1947. [76]

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[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL EX-  
HIBITS TO NINTH CIRCUIT COURT OF  
APPEALS

Defendant, Paul J. Ziegler, having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment herein entered February 18, 1947; and

The said Defendant and Plaintiff having, through their attorneys, by stipulation agreed that all original exhibits in the within action may be transmitted to the Circuit Court of Appeals for the Ninth Circuit; and

The Court having, under Rule 75(i), Federal Rules of Civil Procedure, deemed it necessary and appropriate that

all original exhibits in the within action be sent to the Circuit Court of Appeals for the Ninth Circuit in lieu of copies thereof, and that the originals be inspected by said Appellate Court;

It Is Hereby Ordered, Adjudged and Decreed that all original exhibits in the within action shall be withdrawn from [77] the files of this Court and transmitted by the Clerk thereof to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit so that said original exhibits may be sent to the Circuit Court of Appeals for the Ninth Circuit in lieu of copies thereof, and the originals inspected by said Appellate Court; and

It Is Further Ordered, Adjudged and Decreed that after said original exhibits have served their purpose in said Appellate Court, they be returned by the Clerk of the Circuit Court of Appeals for the Ninth Circuit to the Clerk of the United States District Court for the Southern District of California.

June 4, '47.

J. F. T. O'CONNOR  
Judge U. S. District Court

Presented by Charles H. Carr, Atty. for Defendant,  
Paul J. Ziegler.

Approved as to Form William Strong, Attorney for  
Plaintiff.

[Endorsed]: Filed Jun. 4, 1947. [78]



[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING TIME  
FOR FILING AND DOCKETING

It Is Hereby Stipulated by and between the parties hereto through their respective Counsel that Defendant and Appellant may have to and including June 1, 1947, within which to file and docket the Record on Appeal in the above entitled matter, subject to Order of Court.

Dated this 17th day of March, 1947.

CHARLES H. CARR

Attorney for Defendant and Appellant, Paul J. Ziegler

WILLIAM STRONG

Asst. U. S. Attorney, Attorney for Plaintiff and Appellee, United States of America

It is so ordered

BEN HARRISON

Judge, U. S. District Court

[Endorsed]: Filed Mar. 17, 1947. [79]

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[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING TIME  
FOR FILING AND DOCKETING

It Is Hereby Stipulated, by and between the parties hereto, through their respective Counsel, that Defendant and Appellant may have to and including the 20th day



of June, 1947, within which to file and docket the Record on Appeal in the above entitled matter, subject to Order of Court.

Dated: May 28, 1947.

CHARLES H. CARR

Attorney for Defendant and Appellant, Paul J. Ziegler

JAMES M. CARTER

U. S. Attorney

Attorney for Plaintiff and Appellee, United States of America

It Is so Ordered,

J. F. T. O'CONNOR

Judge, U. S. District Court

[Endorsed]: Filed May 28, 1947. [80]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 83 inclusive contain full, true and correct copies of Information; Minute Order Entered January 13, 1947; Motion to Dismiss the Information; Minute Order Entered January 20, 1947; Notice of Motion to Amend; a portion of the Minute Orders Entered February 4 and February 7, 1947; Defendant's Requested Instructions;

Minute Order Entered February 11, 1947; Verdict of the Jury; Notice of and Motion in Arrest of Judgment; Notice of and Motion for Judgment of Acquittal under Rule 29 etc.; Minute Order Entered February 18, 1947; Judgment and Commitment; Order for Deposit of Bonds Pending Appeal; Notice of Appeal; Stipulation and Order for Transmittal of Original Exhibits; Two Stipulations and Orders Extending Time for Filing and Docketing Appeal and Stipulation Designating Record on Appeal which, together with the Original Exhibits and Copy of the Reporter's Transcript, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$21.30 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 12 day of June, A. D. 1947.

(Seal)

EDMUND L. SMITH,

Clerk

By Theodore Hocke,  
Chief Deputy Clerk.

[Title of District Court and Cause]

Honorable J. F. T. O'Connor, Judge Presiding.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California,  
Tuesday, February 4, 1947.

Appearances:

For the Plaintiff: Wm. Strong, Esq.

For the Defendants: Charles H. Carr, Esq., and Mildred Kluckhorn.

Los Angeles, California, Tuesday, February 4, 1947,  
10:00 A. M.

The Court: Call the calendar, Mr. Cross.

The Clerk: No. 19,106 Criminal, United States against West Coast Supply Company, a partnership, and Paul J. Ziegler, for a jury trial.

Mr. Strong: Ready for the Government.

Mr. Carr: The defendants are ready.

The Court: Call the jury.

(Whereupon, a jury was duly selected, empanelled and sworn.)

The Court: Does either side feel we should have an alternate juror in this case?

Mr. Strong: I don't see any necessity for it, your Honor.

The Court: Mr. Carr?

Mr. Carr: I don't think so, your Honor.

The Court: The jurors who have not been called to service in this case will be excused until Thursday of this week. That will be February the 6th at 9:45 in Judge McCormick's court, which is the court room just opposite

this one. You will report there, please. You will now be excused.

We have had no recess this morning; and if we take our usual recess, it would bring us to 12:00 o'clock. So I [3\*] think it would be agreeable to the Government and the defense to adjourn now until 2:00 o'clock.

Is that satisfactory?

Mr. Carr: Yes, your Honor.

Mr. Strong: Yes, your Honor.

The Court: Ladies and gentlemen of the jury, during all the recesses of this case you will not discuss this case or any part of it with any of your fellow jurors or with anyone else. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court.

We will now take a recess until 2:00 o'clock.

(Whereupon, at 11:40 o'clock a. m. a recess was taken until 2:00 o'clock p. m. of the same day.) [4]

Los Angeles, California, Tuesday, February 4, 1947;  
2:00 P. M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. 19,106 Criminal, United States against West Coast Supply Company and Paul J. Ziegler for further jury trial.

Mr. Strong: Ready for the Government.

Mr. Carr: Ready for the defendants.

The Court: Do both parties stipulate the jury is present?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Does the Government wish to make an opening statement?

Mr. Strong: Yes, your Honor.

The Court: Does either side require the court to again read the information to the jury? I have read the information in full, the eight counts, to the jury. They have all said that they heard it.

After the jury is sworn it is proper to read it again if either side desires it read to the jury.

Mr. Carr: The defense waives that, your Honor, gladly.

Mr. Strong: The Government waives.

The Court: Does the Government wish to make an opening statement?

Mr. Strong: Yes, your Honor. [5]

The Court: Proceed.

#### Opening Statement in Behalf of the Government.

Mr. Strong: Your Honor, counsel, ladies and gentlemen, I am not going to spend too much time discussing with you here now what it is that the Government intends to prove in this case because I think that as the proof goes in you will be able to discern yourself very clearly exactly how it fits into the picture.

I merely want, however, to put before you what it is that the Government intends to prove, in general terms, so that you will have some outline for following the proof as it comes through the witnesses and the exhibits which I introduced in evidence.

You heard the information read by His Honor, and you will recall there are eight counts here, each one charging a separate violation.

Four of these counts relate to the issuance of ration checks by the defendants. That is what the Government charges; and, of course, as you know, that is what we

hope to prove, hope to convince you that happened. But at this point it is simply what we charge happened, what we intend to show you did happen.

You have four of these counts dealing with ration checks which were issued, as we claim, at a time when the [6] account on which they were drawn did not have anywhere near the amount of pounds of sugar available for drawing by means of ration checks that the checks covered.

Specifically we intend to show you that the total of the four checks which were issued by these defendants were one million three hundred thousand pounds of sugar and that the defendants knew at the time that they issued these checks, all of which were issued on one day—July 1st, 1946—that there was not any one million three hundred thousand pounds available to them to draw. As a matter of fact, the total amount available to draw on was less than 50,000 pounds.

One of the witnesses will give you the exact figures, but it is less than fifty thousand pounds. So that there was, as we believe, a considerable overdraft on that date.

We will further attempt to show you that the defendants knew full well at the time that they issued these checks for one million three hundred thousand pounds that they could not draw any such amount because there was not that much available; and they also knew it was necessary, in order to obtain sugar, to have ration checks issued for the amount of sugar which they obtained.

That deals with four counts. Each one covers one check, the total of which, as I say, is one million three hundred thousand pounds. The other four counts deal with the receipt of sugar which the Government charges was a rationed [7] commodity at that time.



These counts charge that certain amounts of sugar were received by the defendants on the basis of and in exchange for these ration checks that I just mentioned and that when they obtained this sugar, which totaled approximately one million three hundred thousand pounds, less two hundred twenty thousand, whatever it is—it is one million one hundred thousand pounds, in that vicinity—that when they received that sugar they knew that they had not given any ration currency for which they had a sufficient balance in the account and that they knew that they were, in fact, receiving sugar without having the ration currency.

That, as His Honor will tell you in the instructions on the law, is, as the Government charges, a violation of the law.

The evidence which I will produce here, in brief outline, will be first to show the issuance of these checks, to show who issued them, to show you the checks themselves.

We will introduce them in evidence, if His Honor permits. Then we will try to show you how it was followed through, step by step; how the sugar was ordered; how it was delivered; how they received it. So you will be able to see the precise formula that was followed and exactly how the entire transaction was carried out.

The documentary evidence which I intend to introduce [8] will be all along those lines. Then, as you can see, as I said at the outset, all that I am giving you is just a general outline because there is no point of my going into each of the items of evidence when everything that I introduce will be intended to point in that general direction:

Four checks totaling one million three hundred thousand pounds, issued when there was no such balance, and sugar received in return for those checks which, in effect, was received without the ration currency being issued because the ration currency, we claim, was not any good since there was no balance to cover it.

The Court: Does the defense wish at this time to make an opening statement, or at the conclusion of the Government's case?

Mr. Carr: We would like to waive a statement at this time, your Honor.

The Court: Let the record show the defense reserves an opening statement to the jury until the close of the Government's case.

Gentlemen, when may I have the requested instructions?

Mr. Strong: This afternoon.

The Court: Mr. Carr?

Mr. Carr: Your Honor, I have most of my general instructions ready. I am working on the specific instructions. Frankly, until I can see the direction of the proof, maybe [9] it will be this afternoon. I will probably be in a position tomorrow to present them, but I should like to have the advantage of at least getting the direction of the proof.

It will be under the new rules, I believe, that it was contemplated that the defendant be given that opportunity.

I shall not delay, your Honor.

The Court: All right, tomorrow afternoon at 2:00 o'clock.

The Government may proceed.

Mr. Strong: Call Richard Hartt.

Mr. Carr: I hate or dislike removing all these people from the court room; but I really ought to request the rule, your Honor. If counsel has some category of witnesses he might wish not to exclude from the court room, I shall be perfectly willing to try to be reasonable about it. Otherwise I shall have to request that the witnesses be excluded.

The Court: How many witnesses have you, Mr. Strong?

Mr. Strong: Approximately 40. About seven or eight are Office of Price Administration agents.

The Court: That is a group such as Mr. Carr mentions.

Mr. Carr: I realize that one or two agents working on the case may remain. We are certainly not going to object to that. If they are going to testify to some similar transaction which is a corroborative matter, I would prefer that one testify out of the presence of the other.

Mr. Strong: We have no objection. [10]

The Court: I shall exclude witnesses on both sides, except the defendant, of course.

Mr. Strong: We would like to have two agents to work on the case.

The Court: There is never any objection to that.

Mr. Carr: I have no objection to that.

The Court: Will you see what court room is available (addressing the bailiff)?

Mr. Carr: We have none here at present for the defense, except the defendant, your Honor.

The Court: All right.

(Brief pause in the proceedings.)

The Court: You may call your first witness. We can get the preliminaries over.

Mr. Strong: Mr. Hartt.

The Court: There is no objection to that?

Mr. Carr: No, no objection.

RICHARD C. HARTT,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Richard C. Hartt.

The Clerk: Take the stand, please.

The Court: H-a-r-t? [11]

The Witness: H-a-r-t-t.

The Court: Proceed.

Mr. Carr: Go ahead, I have no objection if he goes ahead at this time while we are waiting for the witnesses to leave.

Mr. Strong: Your Honor, may I remain seated while I examine the witness?

The Court: Yes.

Mr. Strong: Thank you.

Direct Examination.

By Mr. Strong:

Q. Mr. Hartt, what is your occupation?

A. Banking.

Q. What bank?           A. Union Bank.

Q. What is your capacity there?

A. At present I am manager of the adjustment department.

(Testimony of Richard C. Hartt)

Q. Did you at any time while you were employed by the Union Bank—I assume that is the Union Bank and Trust Company? A. That is right.

Q. Los Angeles? A. Yes.

Q. Eighth and Hill Streets? [12] A. Yes, sir.

Q. Did you at any time while you were employed by that bank during 1946 have any duties with reference to sugar ration accounts with that bank?

A. I had complete charge.

Q. Beg pardon? A. I had complete charge.

Q. Did you at any time during 1946 have charge of the ration bank account of the West Coast Supply Company? A. Yes, sir.

The Court: All witnesses in the case will be excluded from the court room. You will be called as counsel for either side desires your presence. If you will please go with the bailiff now, he will show you to the court room that is available.

(Witnesses excluded from the court room.)

Mr. Carr: May I suggest that counsel state for the record the names of the agents that he is having remain?

Mr. Strong: Yes. Mr. Findley and Mr. Pruitt.

Mr. Carr: Thank you.

The Court: Which is Mr. Findley?

Mr. Strong: Mr. Findley?

(Mr. Findley rises.)

The Court: Thank you. And Mr. Pruitt?

(Mr. Pruitt rises.) [13]

The Court: Thank you. Mr. Pruitt.

We have 12 left in the audience. Are any of those witnesses, Mr. Strong or Mr. Carr?

(Testimony of Richard C. Hartt)

Mr. Carr: Not defense witnesses, your Honor.

Mr. Strong: I don't know some of my witnesses by sight. May I make inquiry direct?

The Court: I shall ask them.

Is anyone in the court room, or any of you, witnesses on either side of this case?

(No response.)

None seem to be witnesses. Proceed, Mr. Strong.

Mr. Strong: May I have the last question?

(Question read by the reporter.)

Q. By Mr. Strong: That is at the Union Bank and Trust Company?      A. Yes, sir.

Q. Now, will you explain what kind of an account that is and how it operates?

A. Do you want the complete explanation of how a ration bank account operates?

Q. In as few words as you possibly can.

A. Well, a ration bank account is nothing more or less than a dollar account in a certain sense, that if a man were to draw a check against a ration sugar account he should have so many pounds of sugar to cover the checks that he draws. [14]

Q. Let me ask some questions. It might speed this up.

Mr. Carr: I move that that portion of the answer that "he should have so many" be stricken.

Mr. Strong: I will agree to that.

The Court: Yes, strike out "should have."

Q. By Mr. Strong: Is it an account in which there are deposits made?      A. Yes, sir.

Q. Deposits of what made?



(Testimony of Richard C. Hartt)

A. They consist of ration checks, sugar ration checks or stamps.

Q. Is that by numbers of points or pounds?

A. By pounds.

Q. By pounds. Did you have, in effect, deposits or credits of so many pounds available?

A. That is correct.

Q. Those deposits are made by means of deposit slips?

A. Yes, sir.

Q. Are they accompanied by anything?

A. The deposit slips were accompanied by either stamps pasted on little cardboards or checks.

Q. Checks issued by whom?

A. Checks issued by various people.

Q. On their own sugar accounts?

A. On their own sugar accounts. [15]

Q. And you keep a regular set of books on these accounts? A. Yes.

Q. Have you brought with you any books with reference to the sugar ration account of the West Coast Supply Company?

A. I have got with me three ledger sheets pertaining to that account.

Q. May I see them, please?

A. (Producing documents.)

Mr. Strong: Your Honor, may I have these marked for identification as one exhibit, stapled together?

The Court: They may be so marked.

The Clerk: Government's Exhibit No. 1 for identification.

(The documents referred to were marked Government's Exhibit No. 1 for identification.)

(Testimony of Richard C. Hartt)

Q. By Mr. Strong: I show these three sheets, which have been marked as Government's Exhibit 1 for identification, and will you please explain what these are?

A. This is a statement sheet showing the balance of the number of pounds of sugar on deposit at specified dates.

Q. For whom?

A. For the West Coast Supply Company.

Q. Where?

A. At the Union Bank and Trust Company in Los Angeles at Eighth and Hill. [16]

Q. Is that all one account?

A. There are three separate accounts here.

Q. Will you state what they are?

A. They have a wholesale account, a processing account and an industrial account.

Q. Are these sheets so marked?                      A. Yes, sir.

Q. And is this the record on which the bank keeps track of the deposits and withdrawals in connection with the West Coast Supply Company account on sugar rationing?                      A. Yes, sir.

Q. Have you made a search of your records to determine whether there are any such other ledger sheets for the West Coast Supply Company?

A. In regards to sugar rationing?

Q. Yes.

A. We have, but they are all of different periods.

Q. Yes?

A. Those are the only accounts for that period.

(Testimony of Richard C. Hartt)

Mr. Strong: I offer this in evidence, your Honor.

The Court: In evidence.

Mr. Carr: If the court please—

The Court: Go ahead.

Mr. Carr: I should like to make this general objection: that he is offering the ledger sheets on three accounts, and [17] we have no identification of what proof he is going to offer as to which account, which account is involved in this information. And upon that general ground I must object because he is actually introducing three separate accounts now.

Mr. Strong: May I state—

Mr. Carr: I don't know just what the purpose is.

Mr. Strong: —it is the Government's intention that all accounts were insufficient to cover the checks drawn. Consequently, we are introducing all the ledger sheets for all the accounts.

The Court: Under that theory it may go in if you can establish it. Otherwise it will be subject to be stricken out by defense counsel if you do not connect it up.

Mr. Carr: I think with that understanding it is perfectly all right.

The Court: You may strike it out if it is not connected up.

The Clerk: Government's Exhibit 1 in evidence.

(The documents referred to were marked Government's Exhibit 1 and introduced in evidence.)

Q. By Mr. Strong: Did you at my request make a search of all the sugar rationing accounts of the Union

(Testimony of Richard C. Hartt)

Bank and Trust Company to determine whether during June, July or August, 1946, there was any sugar rationing account of any kind for the John H. Ziegler Company? [18]      A. There were not.

Q. You made a search?      A. Yes, sir.

Q. There was no such account?

Mr. Carr: That is objected to as being wholly without the issues of this case, your Honor. I see no connection with any change in the indictment, the information, rather.

The Court: Well, he is not mentioned.

Mr. Strong: He is the first witness, your Honor. I cannot prove anything in the case through the first one. However, I can withdraw that question at this time.

The Court: This is Paul J. Ziegler.

Mr. Strong: Yes.

The Court: I shall sustain that objection.

Mr. Strong: All right.

Q. Is there an authorized signature card used by the Union Bank and Trust Company in connection with the sugar ration accounts?      A. Yes, sir.

Mr. Strong: May I have this marked as Government's Exhibit next in number?

The Clerk: Government Exhibit 2 for identification.

(The document referred to was marked Government's Exhibit No. 2 for identification.)

Q. By Mr. Strong: I show you Government's Exhibit 2 [19] for identification. Will you state what this document is?

A. This document is a signature card for the ration bank account of the West Coast Supply Company for processed food, sugar, meats, fats, and so forth.

(Testimony of Richard C. Hartt)

It shows all of those people authorized to sign on checks drawn against this account.

Q. That is the West Coast Sugar—

A. West Coast Supply.

Q. Supply Company? A. Yes.

Mr. Strong: I offer this in evidence as Government's Exhibit 2, your Honor.

The Court: In evidence?

Mr. Carr: I will have to object.

The Court: Just a moment.

Mr. Carr: I don't know about the connecting up, your Honor; but just to keep my record straight, with the same understanding, subject to motion to strike?

The Court: With the same understanding, it is in evidence subject to a motion to strike if not connected up.

Mr. Strong: If your Honor please, I am a little confused. I do not know what your Honor means by "the same understanding."

This is a general signature card. I don't know that the same problem arises as it does with those sheets.

The Court: Well, the point is, suppose you do not connect [20] it up with any of these signatures? Would not a motion to strike be good?

Mr. Strong: Oh, yes. I am sorry. I misunderstood the understanding.

The Court: Certainly.

Q. By Mr. Strong: I show you Government's Exhibit 2 and ask you whether any sugar ration checks were drawn against this account signed by the one whose signature is shown here, "Paul J. Ziegler"?

(Testimony of Richard C. Hartt)

Mr. Carr: Well, now, the checks, I am afraid, must speak for themselves. I object to that as calling for a conclusion of the witness.

The Court: There is no foundation laid. The objection would be good there.

You would have to show that this witness knows the signature of Paul J. Ziegler.

I think that objection would be good, counsel.

Mr. Strong: May I have these documents marked as Government's Exhibits next in number, each one separately, if your Honor please?

The Clerk: That will be Government's Exhibits 3, 4—

The Court: Now, wait a minute. Government's Exhibit 3. Will you give me the number of the check and the date?

The Clerk: Yes, your Honor. The check is No. 148. It is dated July 1, 1946; and it is for eighty thousand pounds of [21] sugar.

That is Government's Exhibit 3 for identification.

(The document referred to was marked as Government's Exhibit No. 3 for identification.)

The Court: All right, the next one?

The Clerk: The next one is Government's Exhibit No. 4. It is dated July 1, 1946, check No. 146, and for 660,000 pounds of sugar.

(The document referred to was marked as Government's Exhibit No. 4 for identification.)

The Court: The next one?



(Testimony of Richard C. Hartt)

The Clerk: Yes, your Honor. The next one is Government's Exhibit 5 for identification. It is a check dated July 1, 1946, for 30,000 pounds of sugar, check No. 145.

(The document referred to was marked as Government's Exhibit No. 5 for identification.)

The Court: The next one?

The Clerk: The next exhibit is Government's Exhibit 6 for identification. It is a check dated July 1, 1946, No. 144 for 600,000 pounds of sugar.

(The document referred to was marked as Government's Exhibit No. 6 for identification.)

The Court: The West Coast authorization card, Mr. Cross, is Exhibit No. what?

The Clerk: No. 2, your Honor. [22]

The Court: Very well.

Q. By Mr. Strong: I show you Government's Exhibits Nos. 3, 4, 5, and 6; and ask you whether you ever saw these documents before? A. Yes, sir, I have.

Q. Did you see them in your capacity which you have described here in connection with the sugar ration account with the Union Bank and Trust Company?

A. Yes, sir.

Q. And approximately when did you see those documents? A. Sometime in July.

Q. What year? A. Of 1946.

Q. As far as you know, or do you know whether those checks were paid against the account of the West Coast Supply Company at your bank?

A. Yes, sir, they were posted against that account.

(Testimony of Richard C. Hartt)

Q. Does the posting of these four checks which you have before your hand appear on these ledger sheets which are Government's Exhibit 1 in evidence?

A. Yes, sir, they do.

Q. Would you take a pencil and check off where they appear on those sheets?           A. (Marking document.)

Mr. Carr: May the record show which account he is [23] referring to?

Q. By Mr. Strong: Have you done that?

A. Yes, sir.

Q. Will you state for the record against which account these checks were marked?

A. These checks were marked against the Wholesale account of the West Coast Supply Company.

Q. At the time that you saw these checks in July, 1946, will you state whether their appearance on the face of the check was the same as they are now; or if it was different, in what respect it was different?

Mr. Carr: That is objected to, your Honor. Counsel is really getting ahead of himself.

He is, in the record, putting the checks in evidence. I have not been able to object to the foundation to several questions. The foundation involves, first, the authority of the West Coast Supply Company for whoever acted on their behalf; secondly, this morning counsel himself said there was some question about the variance on the check. And I think the proper thing is either to offer the checks or not offer them.

He is now attempting to establish in the record what the checks themselves show. I object to his doing it in that manner.

Mr. Strong: If your Honor please— [24]

(Testimony of Richard C. Hartt)

The Court: Well, the question as the court understands it—and if I am not correct, I will stand corrected—is merely asking this witness this one question at this time, whether or not these instruments, Exhibits 3, 4, 5 and 6 for identification, are in any manner changed from the time that he had them or saw them in his possession in July.

That far it seems to the court proper. In other words, if he could show they had been mutilated in any manner or that there was something different, limited to that in this question, if counsel has any objection, I think that is what the court gathers from the question.

Mr. Strong: That was the purpose of my question.

The Court: Limited to that, Mr. Carr—

Mr. Carr: Very well. If he is limited to that specific thing.

The Court: Are they the same as he saw them, or if there is any change, he may indicate it. All right.

The Witness: Yes, sir, they are the same as when I saw them in '46.

Q. By Mr. Strong: You have examined them?

A. Yes, sir.

Q. Now, in connection with these four checks—Government's Exhibits 3, 4, 5 and 6 for identification—did you have any discussion with either of the defendants at or about the date that appears on these checks? [25]

Mr. Carr: Well, now, which defendants are you referring to? One is a partnership.

Mr. Strong: I think if he answers "yes," I can ask him which.

Mr. Carr: I object to that question. It is compounded in such a way that it may catch the defendant by sur-

(Testimony of Richard C. Hartt)

prise. One defendant is a partnership. The other is Paul J. Ziegler.

The Court: Mr. Reporter, will you read the question again?

(Question read by the reporter.)

The Court: Just answer that yes or no. If the witness says "no," then that ends it.

Mr. Carr: That is true.

The Court: Answer that yes or no.

The Witness: Yes.

The Court: Proceed.

Q. By Mr. Strong: Which one?

A. The check of 600,000 pounds of sugar.

Q. Which defendant? A. Mr. Paul J. Ziegler.

Q. What was the occasion of your calling or speaking, rather, to Mr. Paul J. Ziegler in connection with any of these checks?

A. Well, through ordinary banking functions when an account became over drawn we always called up our depositor [26] to inform him of such an overdraft to see whether or not our books or his books might have been in error.

Q. Is that what happened in this case?

A. Yes.

Q. But when did you call Mr. Paul Ziegler the first time with reference to any of these checks?

A. I would say approximately the 25th or 26th of July of 1946.

Q. And in connection with which check did you call him? A. The check of 600,000 pounds of sugar.

Q. Would you look at those checks and see which Exhibit number it is? A. That is Exhibit No. 6.

(Testimony of Richard C. Hartt)

Q. Did you speak to Mr. Ziegler personally directly, over the phone, or in what manner?

A. On the phone.

Q. Would you state the conversation and everything that transpired from the time that you began to put in the call for Paul Ziegler?

Mr. Carr: Well, I would like a little better foundation laid, your Honor. After all, he is talking to someone on the telephone. Counsel certainly ought to lay the foundation.

The Court: I think you ought to first identify further, if he knows, the voice and how many times he talked to him, a little better foundation. [27]

Q. By Mr. Strong: Have you had occasion to speak to the defendant, Paul J. Ziegler, on any occasion prior to this time that you are referring to? A. Yes, sir.

Q. Approximately how many times had you spoken to Paul J. Ziegler? A. Oh, about a half a dozen.

Q. Was that directly to his face or over the phone or both?

A. Well, Mr. Ziegler came up to the bank on one occasion. I spoke to him there, and then I had called him on the other occasions at the West Coast Supply Company.

Q. Was that in connection with any business relating to the sugar rationing account of the West Coast Supply Company? A. Yes, sir.

Q. Were you able to recognize Mr. Ziegler's voice over the telephone on those occasions? A. Yes, sir.

Q. Did he, on any of the occasions prior to the one that I am questioning about here, identify himself over the phone as Paul J. Ziegler?

(Testimony of Richard C. Hartt)

A. Well, my recollection is not Paul J. I would call the West Coast Supply Company and ask for Mr. Paul Ziegler. My recollection is that the voice coming back from the phone [28] said, "Ziegler speaking."

Q. On the occasion when you called the West Coast Supply Company, with reference to this check for 600,000 pounds, did you ask for Mr. Paul Ziegler?

A. Yes, sir.

Q. And did a voice reply? A. Yes, sir.

Q. Will you state what was said?

Mr. Carr: Well, now, just a moment, your Honor. I think that I should be allowed the privilege at this point of voir dire, of establishing that there are two other brothers there.

Mr. Strong: I have no objection.

The Court: Proceed.

Mr. Carr: May I just ask one question?

The Court: Proceed.

Voir Dire Examination.

By Mr. Carr:

Q. Mr. Hartt, you know that there are two other brothers besides Paul Ziegler? A. Yes, sir.

Q. Had you talked to them on the telephone?

A. No, sir.

Q. So far as you know, you had never talked to them? [29]

A. No. The only one, as far as I know of that I ever spoke to on the phone, was Mr. Paul Ziegler.

The Court: Proceed.



(Testimony of Richard C. Hartt)

Direct Examination (Resumed)

Q. By Mr. Strong: On this occasion did you recognize the voice on the other end of the phone?

A. Yes, sir, as the voice I had spoken to before.

Q. Whose voice? A. Mr. Paul Ziegler.

Q. The defendant? A. Yes, sir.

Q. Will you now state the substance of the conversation between you and Mr. Ziegler on that occasion?

A. Well, when the voice came on the phone and said, "Ziegler speaking," I said, "This is Hartt, Union Bank and Trust Company. In regards to your ration banking account I have a check here for 600,000 pounds of sugar, and you don't have near enough sugar in your ration banking account to cover it. Do you have any deposits to come in the bank that will take care of it?"

And the answer was, "Well, this is Saturday morning. There is no one here except myself right now. But I will contact you on Monday."

So I held it in abeyance until Monday; and not having [30] heard from Mr. Ziegler during banking hours on Monday, I immediately called the Office of Price Administration to report an unusual overdraft on the sugar ration account of the West Coast Supply Company.

Mr. Carr: I move to strike the word "unusual," your Honor, as being—

The Court: It may go out. The word "unusual" may go out as a conclusion of the witness.

Q. By Mr. Strong: Go ahead.

A. That is all there was to it at that time. I called them.

The Court: "Them"? Whom do you mean by "them"?

The Witness: The Office of Price Administration.

(Testimony of Richard C. Hartt)

The Court: Do not give us any conversation with them.

The Witness: No

Q. By Mr. Strong: Did you have occasion to speak—  
was your Honor going to say something?

The Court: I just warned the witness not to give any  
conversation with the Office of Price Administration.  
Proceed.

Q. By Mr. Strong: Did you on the Monday follow-  
ing this Saturday call have occasion to call the West Coast  
Supply Company again? A. No, sir, I did not.

Q. When was the next time that you spoke to Paul  
J. Ziegler? [31]

A. Mr. Ziegler called me on Tuesday.

Q. Beg pardon?

A. Mr. Ziegler called me on Tuesday, the following  
day.

Q. Did you recognize his voice? A. Yes, sir.

Q. Will you state the substance of the conversation  
on that occasion?

Mr. Carr: Do I understand you are referring to Paul  
Ziegler still?

Mr. Strong: Yes.

The Witness: Mr. Paul Ziegler called me on Tuesday  
and told me he had tried to contact me on Monday but  
was unable to locate me, which might have been so  
because—

The Court: Just a moment.

The Witness: —because I am at various—

The Court: Just a moment. Just answer the question,  
please.

Q. By Mr. Strong: Just state the conversation with-  
out any trimmings.

(Testimony of Richard C. Hartt)

A. Thank you. I am sorry.

The Court: It is all right. The average layman is not familiar with court procedure. I want you to know, witness: do not take it as any personal offense when the counsel on either side make a suggestion or make an objection. Proceed.

The Witness: Mr. Ziegler said that he had tried to [32] contact me on Monday. I told Mr. Ziegler, not having heard from him, I had reported this overdraft to the Office of Price Administration.

The only reply I got from Mr. Ziegler was, "Well, okay."

Q. By Mr. Strong: Did you at any time subsequent to that have any occasion to speak to Mr. Paul J. Ziegler about any of the other checks, which are Government's Exhibits 3, 4, 5 and 6 for identification?

A. Yes, sir, I did.

Q. When was that?

A. Oh, I should say approximately the first of August when another one of the checks, which are now offered as Exhibits, came into the bank.

Q. Which is that?

Mr. Carr: Well, now, if the court please, we are continually referring to exhibits which are not in evidence and they are being testified to as facts concerning those exhibits. I am going to object.

The Court: Mr. Carr, if the Government offers them, all of them, at this time, you will say there is no connection with this case and they have not been identified.

I assume the only purpose at this time is to identify sufficiently the checks so that they may be offered in evidence.

(Testimony of Richard C. Hartt)

Mr. Carr: Well, just so that I may make myself plain, your Honor. [33]

The Court: Yes.

Mr. Carr: The thing I am concerned about is establishing in a criminal case the responsibility of someone acting for a partnership; and may I reserve, then, the right to later, if it is not established, move to strike this line of testimony?

The Court: Yes, that will be understood. Proceed. Read the last question.

(Question read by the reporter.)

The Court: Which check?

The Witness: The check of 660,000 pounds of sugar.

The Court: That is No. 4.

Q. By Mr. Strong: Did you call up Mr. Paul J. Ziegler? A. Yes, sir.

Q. Did you recognize the voice on the other end of the telephone?

A. I recognized it as the same voice that I had spoken to before.

Q. Whose voice? A. Mr. Paul J. Ziegler.

Q. Will you state the substance of the conversation on this occasion?

A. At that time I told Mr. Ziegler that another check had arrived in the bank for 660,000 pounds of sugar; and Mr. Ziegler's reply was, "Well, your instructions are to post [34] it and show it as an overdraft and report it to the Office of Price Administration."

I said, "Yes, sir, those are my instructions and that is what I intend to do."

He said, "Okay."

(Testimony of Richard C. Hartt)

Q. Do your records show any place the number of pounds of sugar which were available for draft in the account of the West Coast Supply Company on July 1st and thereafter?

A. Yes, sir, they do.

Q. Which of the records shows that?

A. These ledger sheets.

Q. That is, Government's Exhibit 1?

A. Yes, sir.

Q. Will you indicate where it shows the highest balance available on and after July 1, 1946?

A. In the furthest right-hand column.

Q. Would you underscore that, please?

A. (Marking document.) That is the balance as of that date.

Q. As of what date?

A. As of July the 11th. That is the balance they had on hand when the large—

Q. Speak up louder so the jury and counsel can hear you.

A. Well, I might as well— [35]

Q. Speak up, please.

A. Okay. The balances kept in the right-hand corner of the ledger sheet—they are the balances.

Q. Just tell me what the balance was, the balance as of July 11, 1946, on the sugar ration account of the West Coast Supply Company?

A. The sugar ration account of the West Coast Supply Company was 23,196 pounds.

Q. Was there at any time after July 11, 1946, any amount higher than the 23,196 pounds?

A. No, sir.

(Testimony of Richard C. Hartt)

Q. That is, in the account of the West Coast Supply Company? A. No, sir.

Q. Is that right? A. That is right.

The Court: When was the account closed?

The Witness: The account was closed on the 30th of August, 1946.

Q. By Mr. Strong: Were any deposits made to that account between July 1, 1946 and the date that it was closed? A. No, sir.

Q. You are talking about the wholesale account, is that right? A. Yes, sir. [36]

Q. Would you look on the industrial sugar account and state what was the highest balance of sugar credit available in that account for the West Coast Supply Company on and after July 1, 1946? A. 4,689 pounds.

Q. When was that account closed?

A. On the 30th of August, 1946.

Q. And the processing account of the West Coast Supply Company, as to the highest amount, highest balance available on and after July 1, 1946?

A. 6,832 pounds.

Q. That was when?

A. That account was inactive since the first of June of 1946.

The Court: Do I understand in that processing account that there was, on June 1st, 6,832 pounds of sugar that was available to be withdrawn and that it remained 6,832 until it was closed?

The Witness: Yes, sir.

The Court: It was indicative, in other words, there were no withdrawals or deposits against that?

The Witness: That's right.



(Testimony of Richard C. Hartt)

The Court: All right.

Q. By Mr. Strong: Until what date?

A. Until it was closed on the 30th of August of 1946. [37]

Q. And how was it closed?

A. By an order from the Office of Price Administration.

Q. Withdrawing that balance? A. Yes, sir.

Mr. Carr: I move to strike both of those. That is wholly immaterial to the issue here.

The Court: Yes.

Mr. Carr: It is prejudging what the Office of Price Administration—

The Court: I do not believe that is binding on the defendants, what they did.

Mr. Carr: That may go out, those two last answers?

The Court: They may go out.

Mr. Strong: I will agree.

Q. The Government Exhibits for identification, Nos. 3, 4, 5 and 6—those four checks—were they entered any place on these ledger sheets, Government's Exhibit 1?

A. Yes, sir.

Mr. Carr: I am going to object to that until the checks are in evidence, your Honor. I do not think that it is proper to, by indirection, put the checks in evidence.

The Court: Is this witness familiar with the signature on the checks?

Mr. Strong: Yes, your Honor.

The Court: Has there been any testimony to that effect? [38]

(Testimony of Richard C. Hartt)

Q. By Mr. Strong: Are you familiar with the signature on the checks, which are Government's Exhibits 3, 4, 5 and 6? A. Yes, sir.

Q. Do you know whose signature it is?

A. Paul J. Ziegler.

Q. The defendant? A. Yes, sir.

Q. Is that signature shown anywhere on Government's Exhibit 2? A. It is.

Q. That is the authorized signature card?

A. Yes, sir.

Mr. Strong: I offer in evidence Government's Exhibits 3, 4, 5 and 6.

Mr. Carr: Now, at this time, your Honor, I have numerous objections to that question.

I suggest, may it please the court, that probably you want to exclude the jury. It is going to take some little time. It is going to involve a study of a legal situation which I am sure your Honor would prefer to have just in your presence.

I should say it will take at least a half an hour, your Honor.

The Court: Is there anything in the legal argument that might prejudice in any way the jury? [39]

Mr. Carr: Well, I don't think so. But I know your Honor's disposition to usually have these matters out of their presence. But I am not reluctant to have it in their presence. I will tell you what the proposition is.

The Court: If it is a legal proposition, I think the jury might be interested in hearing the argument. It does not go to the facts.

Mr. Carr: It may develop further facts.

You will recall this morning that counsel made the statement, which is in the record, to the effect that the information was being amended because there was some question as to whether part of this signature, whether there had been some additions or alterations.

I do not remember his exact language.

Now, I want to address the court on the proposition of law and cite some cases.

First I want your Honor to look at the checks and note that on the face of the checks that, I should like to urge, there appears suspicion of alteration on the face.

Now, if you prefer to have this out of the presence of the jury, I shall be perfectly willing to abide by your Honor's ruling before I point up the facts on the checks.

The Court: The jury might like a few minutes' recess.

You will remember the admonition I have given you, ladies and gentlemen of the jury. [40]

You will not discuss this matter among yourselves or permit anyone to discuss it in your presence and not express or form any opinion as to the merits of the controversy until it is finally submitted to you under the direction of the court.

You will return to the jury room until we call you as soon as the argument is concluded.

(Jury excused at 2:50 o'clock p. m.)

The Court: Proceed, Mr. Carr.

Mr. Carr: May I, your Honor, have those checks, if you please?

The Court: Yes. Hand them to counsel, Mr. Cross.  
(Documents handed to counsel.)

Mr. Carr: Now, I want to first address myself to the checks and then point up Mr. Strong's statement this morning.

We have here a check purportedly drawn by West Coast Supply Company, which is in typing and which is again a partnership. The information charges them as a partnership.

It is fundamental, and I have numerous authorities to cite your Honor that in the case of a partnership or the case of any check where somebody is signing a check in behalf of a company, corporation or partnership, there must be the showing of the authority of that person to act for that partnership.

That is a very sound rule in a civil case. But it goes [41] even further in a criminal case because the cases very distinctly hold that to charge a partnership you must bring home knowledge of the act plus the acquiescence.

On the face of these checks you will see indication of alteration, in my opinion. In the first place you will note—and here is the check that definitely shows it—you will note that—

The Court: Exhibit number what?

Mr. Carr: The exhibit number of No. 5, your Honor.

You will note that check on which appears the printing in ink "West Coast Supply Co." It is abbreviated—"West Coast Supply Co."—and is in a different handwriting, a different colored ink than the signature or the body of the document which, on the face, creates a suspicion of an alteration.

In other words, it does not indicate that the party, Paul J. Ziegler, signed "West Coast Supply Co." At least the suspicion is created.

In the light of counsel's amendment and in the light of his statement raising, himself, the question I want to cite

in a moment the cases which hold that he must eliminate the suspicion from the document before he can offer it in evidence.

That is a very sane rule because if a document has been altered, it is certainly not binding on a person, even in a civil matter, and particularly would it not be binding in a criminal matter. [42]

If you will compare that, that check with, for example, Exhibit No. 3 for identification, you will find, your Honor, that the check, the body of the check, is made out in the same type of ink; that the signature is in that type of ink. It purports to be the signature of Paul J. Ziegler.

However, up above Paul J. Ziegler's name is printed in by typewriting "West Coast Supply Company."

Now, take the check, Exhibit No. 4 for identification, and you will note the same situation exists. The ink of the signature is the same as that written in the other part of the check, except if you will look at the words "West Coast Supply Co." you find it typed in and typed in in a different typing from the other checks and different from the check where the ink is put in.

If you take a look at the check, Exhibit No. 6, you will find that the ink, the writing, the signature of what purports to be Paul J. Ziegler, is the same apparently as the writing which fills in the check, except a third and different form of typing from a typewriter appears over that signature.

We have counsel's statement this morning saying that one of the reasons that he wanted to amend the information was that there was some question about the execution of these documents.

That certainly creates a suspicion. [43]

And the question is now, What is the law? And I am prepared when your Honor is ready if—

The Court: I am ready.

Mr. Carr: —I may proceed.

First I want to give you a District Court case in Pennsylvania, *United States v. McCain*, Eastern District of Pennsylvania, 1 Fed. (2d) 985.

Indictments were returned September 9, 1924, against George McCain, charging him with the sale of whiskey at Chester, Pennsylvania, on March 11, 1924, “ . . . unlawful possession of whiskey on that date and on the same date of maintaining a nuisance at a hotel conducted by him as a place where whiskey was sold and kept . . . ”

Both of the defendants were found guilty, your Honor.

“At the trial, it was shown that William Walters was a barkeeper employed by McCain, and sufficient evidence was produced for the case to go to the jury upon the question as to whether McCain was chargeable with the sale of whiskey by Walters as his employee . . . .”

A Government witness, an officer of the State Constabulary, testified that in March he bought whiskey from Walters.

“On cross examination the attorney for the defendants produced and showed to (the officer) an information under oath, sworn to by him before a justice of the peace of Delaware County, which was subsequently [44] identified as an information accompanying a return of the magistrate to the court of quarter sessions of Delaware County, certified by the magistrate on May 6th, 1924. The return of the magistrate was attached to an indictment against McCain and Walters, returned by the grand jury in the court of quarter sessions . . . charging sales of liquor by the defendants on May 3, 1924.



“Upon (the officer’s) cross-examination . . . he was merely shown the signature to the information . . . and asked if that was his signature, to which he answered in the affirmative. The record (of the court of quarter sessions) was . . . offered in evidence at the close of the defendants’ case for two purposes: First, to show a prior acquittal in the Delaware County Court for the same offense . . . and, second, for the purpose of contradicting the (officer) who had testified that he was not in Chester on the 3rd day of May, 1924. The record was objected to by the assistant district attorney upon the ground that there was a material alteration in the sworn information. . . . Upon inspection, it was found that the figure ‘3rd’ and the word ‘May’ had been written in typewriting into the affidavit after other words and figures indicating a date in March had been erased, and that the same [45] alterations had been made in the jurat of the justice of the peace. No explanation having been offered of the apparent alterations of the record, the record was excluded as evidence to impeach the witness Austin, and as evidence of prior acquittal . . .”

In other words, he was claiming there he had been in jeopardy on this thing. The affidavit was offered, but the court excluded it on the suspicion it was altered. The court denied a motion for new trial and in arrest of judgment, holding that where suspicion is raised to the genuineness of an altered document, the party producing the document is bound to remove the suspicion by accounting for the alteration before it is admissible in evidence.

The court said on page 986:

“Upon the question of the exclusion of the altered affidavit and the return of the magistrate, the general rule is that, where suspicion is raised as to the genuine-

ness of an altered document, the party producing the document is bound to remove the suspicion by accounting for the alteration. . . . The alteration was entirely apparent, and it was material because the paper was offered to prove a prior sworn admission by the witness Austin . . . .”

I read that case first because I now want to cite a Supreme Court of the United States case. [46]

In that particular case, which is *Smith v. United States*, 69 U. S. 219—this was before the court on a writ of error to the Circuit Court for the Northern District of Illinois—suit was instituted by the United States for debt on the official bond of Charles N. Pine, the late United States Marshal. Verdict and judgment were for the plaintiffs, and the defendants excepted and sued out this writ of error.

At the trial the plaintiffs offered the bond in evidence, but defendants objected to the reading of same as inadmissible because it had been altered by the erasure of the name of one of the sureties. Plaintiffs acceded to this objection and called the District Judge as a witness, who testified that when the bond was brought to him for approval it was then the same as it was when offered in evidence, except that the name of the sureties were inserted by him in the introductory part. He further testified that, when the bond was brought to him, the erasure was there and that he had been told by the Marshal and Hoyne that the latter did not wish his name to remain and that he had erased it. The judge held the bond for several days, and all of the sureties but the defendant, Smith, came in and acknowledged its execution.

Smith is the man who is taking this writ of error.

Then the judge signed the certificate, saying all of the signatures were genuine from his own knowledge and that Smith's was genuine from other evidence which had come to his [47] attention. He said he did not know whether Smith ever consented to the erasure.

The bond was again offered and received.

Hoyne testified that at the time the bond was circulated for the signatures of sureties, he signed with the others but that later he decided that he did not want to serve as a surety and told the others that he intended to remove his name. Smith was absent at the time. The erasure was made before the bond was approved, but when and by whom he did not know.

The plaintiffs conceded that the erasure had been made after the defendants signed the bond and that the alteration was apparent on the face of the instrument.

Smith contended that he was discharged from liability on the bond in consequence of the erasure and that the alteration was made without his knowledge or consent.

Smith asked, among other things, that the court instruct the jury if the jury believed that Hoyne's name was erased without his knowledge, the jury should find the issue in his favor;

That the law places the burden of proving consent upon the plaintiffs.

Now, the Supreme Court held, your Honor, that the plaintiffs must account for the alteration and variation and that where it was made without the knowledge and the consent of [48] Smith, he is properly discharged of liability under the bond.

Here is what the court says at page 791:

"The general rule is that where any suspicion . . ."

Note that: any suspicion!

“ . . . is raised as to the genuineness of an altered instrument, whether it be apparent upon inspection or is made so by extraneous evidence, the party producing the instrument and claiming under it is bound to remove the suspicion by accounting for the alteration. 1 Greenl. Ev. 564. Exceptions to the rule undoubtedly arise, as to where the alteration is properly noted in the attestation clause, or where the alteration is against the interest of the party deriving title . . . ”

We do not have that situation here.

“ . . . but the case under consideration obviously falls under the general rule . . . Every material alteration of a written instrument, according to the old decisions, whether made by a party or by a stranger, was fatal to its validity if made after execution, and while the instrument was in the possession and under the control of the party seeking to enforce it, and without the privity of the party to be affected by the alteration. . . Grounds of the doctrine, as explained in the early cases by the text writers, were two-fold. First, That of public policy, which dictates that no [49] man should be permitted to take the chance of committing a fraud without running any risk of losing by the event in case of detection. Second: To insure the identity of the instrument and prevent the substitution of another without the privity of the party concerned. . . ”

Quoting further from Taylor on Evidence in the Supreme Court case, the court said:

“ . . . where the alteration is apparent on the face of the instrument, the party offering it in evidence and claiming under it is bound to show that the alteration was made under such circumstances that it does not affect his right to recover.”

Now, I submit, if the court please, if that is the rule in a civil case where you are trying and attempting to bind a defendant in a criminal case where you have to prove beyond a reasonable doubt his connection with that document and that he executed it as it now stands, that the rule is even more stringent; that the burden is now upon Mr. Strong, to-wit, the Government, to eliminate the suspicion which he himself has cast upon those exhibits.

I submit they are not admissible in evidence for other grounds.

The next ground is the proposition of proof of authority to execute and the admission of altered documents. I combined this memorandum. [50]

No partnership, no corporation, your Honor, can have a check introduced in evidence against it until the authority is established, the agency, if the court please.

I cannot go out here and write out a check on the Bank of America and put the Bank of America's name over the top of my signature and bind the Bank of America.

I submit in addition to the suspicion of alteration there has been absolutely no proof of authority on behalf of the West Coast Supply Company.

How did the West Coast Supply Company name ever get on these checks? That has got to be established. Where is the authority?

Now he is offering them in evidence without even laying that foundation.

In connection with the law, I think your Honor does not need to have authorities to state that you cannot, for example, prove agency by the act or declaration of an agent. It is wholly insufficient.



First, suspicion has been created with respect to alteration. Secondly, no authority has been shown for the appearance of the name "West Coast Supply Company" on those checks: absolutely none.

Respecting the proof of authority to execute, I have numerous cases. I shall just try to pick out two or three, your Honor, and save as much time as possible. However, I have [51] a rather voluminous rough memorandum here. It is headed "Proof of Authority to Execute. . ."

Here, starting back with the Federal case No. 7,181, as an action of ejectment by the lessee of plaintiff James against Gordon & Bowen, the defendant offered in defense a paper in evidence signed by one Richard Peters, as attorney for William Peters. In connection with this offer in defense the court stated at page 307:

"You must produce the power of attorney, under which the agent acted."

Here is a Federal decision, *Arnold v. Thompson & Spear Co.*, 297 Fed. 307.

This was a case in which the suit was for a balance of money claimed due for certain work on a contract with the United States for construction of a general storehouse at a submarine base. He entered into a sub-contract with the corporation to do the plumbing. In the sub-contract the Navy Department was named the owner and the Bureau of Yards and Docks the architect.

Now, the sub-contract required acceptance by them. The defendant offered in evidence a carbon copy of a letter purporting to have been written to Arnold by Bakenhus, who described himself as "Assistant to the Bureau," written on the letterhead of the Bureau of Yards and Docks.



The court reversed the judgment in that case, your [52] Honor, because there was no showing of his authority on that particular document. The mere writing of his name across the top "Assistant to the Bureau" did not mean a thing. There was no proof of his authority at all.

At page 11 the court says:

"The mere fact that he describes himself as 'Assistant to the Bureau' does not establish his authority to speak for it."

I have a Pennsylvania case here, your Honor, reported in 262 Fed. 545, District Court of Pennsylvania.

This was an action on a contract alleged to have been made by correspondence. The plaintiff offered in evidence a letter purporting to be signed by defendant corporation.

There is no difference between the authority of a corporation; that is the real substance of the rule. It might require minutes or something of that kind. But the authority, in any case, would have to be proved.

Here was a letter by the defendant corporation purporting to accept the terms proposed in the letter received from the plaintiff. The defendant contends that there was no evidence that the letter accepting the contract was the letter of the defendant or written by his authority. The court held that the letter was admissible as prima facie that of defendant without proof that the person signing it had authority to make the contract. Then the court said at page 547: [53]

"No proof of signature was required, but the letter was objected to on the ground that the defendant, being a corporation, could sign a letter only by the hand of some natural person, and that the authority of the person who signed the letter to make a contract should be shown before the letter could go in evidence."

In the case of *Denn v. Reid, et al.*, 35 U. S. 524—this was an action for ejectment—the District Court asked that certain questions of law be certified to the Supreme Court. The defendants, to prove that they were purchasers of the land in controversy under James Conner, offered in evidence a deed from Conner to Reid. Deeds were all signed by Henry W. M. Conner, agent and attorney in fact for James Conner, but no evidence as his authority to act as attorney was offered.

The court stated at page 528:

“The deeds which purport to have been executed by Henry W. M. Conner, as agent and attorney in fact for James Conner, cannot be received as evidence for any purpose in the absence of the proper authority by the agent.”

Your Honor, I have many other cases here on which I shall not insist. But here is one further case to which I should like to refer: *The Ninth Circuit, Collins v. Streitz*, C.C.A. 9, 95 Fed. (2d) 430.

This was an action for damages for trespass to real [54] property. Over the plaintiff's objection the defendant introduced a deed conveying Collins' interest in the property. It was objected to on the ground that it was void on its face, it being a deed of gift by an attorney in fact of her principal's property. The deed was executed by “Julia Winifred Mosher-Collins by Hattie Lount Mosher, her attorney in fact.”

Now, there is the writing on a document. The court held that the deed executed by the grantor's attorney in fact was admissible in evidence notwithstanding lack of proof of authority as attorney in fact, where opposing counsel did not question authority of the attorney in fact,

and objected merely that the deed was void on its face. In other words, he failed to make the objection in the lower court, the same objection that I am now making.

The attorney failed to make that objection. The court, however, discussed the law relating to the admission of such documents and said at page 435:

"But the deed before us shows on its face to have been executed by one acting as attorney in fact. The acknowledgment is evidence of execution by Hattie Lount Mosher as attorney in fact for Julia Winifred Mosher-Collins, but her authority to act as such is, of course, not established thereby.

"Nor does any evidence appear in the record bearing on the question of the authority of Hattie L. Mosher [55] to act as attorney in fact for Julia M. Collins. . .

"This is not an occasion where an evidentiary gap may be filled by a presumption, for there is no presumption that one purporting to act for a principal is authorized so to do."

It so happened that the unfortunate thing about that case was that the lawyer did not make the objection in the lower court, but the court states the rule.

Now, if the court please, there are two things. I submit he must remove the suspicion from those documents by proof and at the same time he must establish the authority for the name "West Coast Supply Company" to be on there. And more than the authority, he must show the knowledge of the West Coast Supply Company that it was on there at the time the check was executed and that it was on there with the knowledge of the West Coast Supply Company.

I submit those documents are not admissible in evidence.

The Court: Mr. Carr, I agree with your statement of the law with reference to alteration.

Where is the alteration on any of these checks? They are all very clear: "West Coast Supply Company."

I am looking at the exhibit which is a written check, Exhibit 5. There is no alteration in that name.

Mr. Carr: Your Honor, can you say that after Mr. Strong has made the statement— [56]

The Court: I cannot change the exhibit. If you can show me where there is any word or any letter that is changed in the writing "West Coast Supply Company," I wish you would point it out.

Mr. Carr: I cannot show you any. But I can say that the evidence is going to show that "West Coast Supply Company" was put on after the check was issued.

The Court: I cannot anticipate.

Mr. Carr: There was some question about alteration.

The Court: Well, you are asking me to anticipate evidence.

Mr. Carr: No, I am asking you to require the Government—

The Court: Wait a minute. To require the Government to remove a suspicion of an alteration when there is not any on the exhibit?

Mr. Carr: Well, I respectfully, your Honor, disagree with you.

The Court: Point it out to me. You point it out on any one of those exhibits where there is any alteration, any erasure or any change.

Mr. Carr: I say that on this check, Exhibit 5, when the ink appears to be in a different type of ink, a different type of handwriting, that that creates a suspicion.

The Court: Why, not a bit. You know the general commercial practice of secretaries to write out the whole check at [57] times and have the signature sometimes written out in the handwriting of the person on whose account the check is to be drawn.

Mr. Carr: That is true.

The Court: You say that that raises a suspicion that it was an erasure and it is incorrect because the writing on the check, the date, the payee of the check is in different handwriting and possibly different ink; that if the person who draws the check happens to use a fountain pen or something, that that show an alteration or a suspicion that it is not by the same handwriting as the person upon whose account it is drawn and signed?

Mr. Carr: It may, your Honor. I am not sure of that.

The Court: We are not going to speculate on that.

Mr. Carr: It certainly does in the light of counsel's statement.

The Court: I will allow an exception. I want to hear from the Government on the second point here, what evidence is here on these checks to bind the partnership.

Mr. Strong: Now, your Honor?

The Court: Yes.

Mr. Strong: The first piece of evidence is Government's Exhibit 1.

The Court: I have examined that carefully. That is the authorization I have seen in a million banks in the [58] country.

Mr. Strong: It provides for the West Coast Supply Company and the authorized signatures include the same signature that appears on these checks.



Your Honor can determine that by a simple examination without the aid of an expert witness.

The name "Paul J. Ziegler" is obviously exactly the same on the authorization card as it is on these other checks.

The Court: That is the testimony in the court.

Mr. Strong: Yes, sir.

The Court: It will be a matter for the jury. But how does that bind the partnership? What authority is there to show that the partnership is bound? That is the point I want now.

Mr. Strong: Well, your Honor, that depends upon what authority is being sought.

Here the entire argument of Mr. Carr relates to the civil law of agency, of negotiable instruments and of partnership. It has absolutely nothing to do with criminal law.

In this particular case we have not as yet established that Mr. Ziegler—I will admit that—is acting with the knowledge or pursuant to the authority directly granted to him to perform these very criminal acts which we charge. That we have to establish. That I cannot establish by my first witness, obviously. I have 35 others. [59]

But up to this point I think that the check is admissible as against Paul J. Ziegler, also it may not be binding at this point as against West Coast Supply Company.

I have evidence which I intend to introduce to show wherein Mr. Ziegler has the authority, at least from the criminal standpoint, without regard to agency or partnership or negotiable instruments, which is different law, your Honor, but under this criminal information where Mr. Ziegler's acts are in effect the acts of the West Coast



Supply Company, so as to bind him criminally, as I will show through other witnesses which I have.

At this time—

The Court: There is not any evidence yet to offer those exhibits against the partnership.

Mr. Strong: Very well. I should like to offer these, limited to Paul J. Ziegler and not against the partnership.

The Court: I shall withhold my ruling on that until you reach the other part of the testimony which I think will be more proper.

Mr. Carr: May I add, your Honor, to get it out of the way, the further objection that under the Revised Ration Order No. 3, under all of the sections, the banking sections, the deposit sections, require that the account—in other words, let me state it very simply this way:

To be an offense here there would have to be an account [60] in the name of the West Coast Supply Company and the check itself would have to be drawn as against that account.

If the West Coast Supply Company name is put on there without their knowledge, criminal knowledge, then I must reserve the objection to object later to the introduction of the exhibits as against Ziegler, too because then I will contend that it was not a ration check within the meaning of Third Revised Order No. 3.

The Court: It is so understood.

We will take a recess, gentlemen, for 15 minutes.

Mr. Carr: May I just say, your Honor, I am sorry if I asked for the jury to go out wrongly; but I thought this matter might be a thing that they should not hear at the time.

The Court: That is all right. They got a little rest.  
(Brief recess.)

(The following proceedings were had in the presence of the jury:)

The Court: Do you stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Do you stipulate the defendant is in court?

Mr. Strong: So stipulated.

The Court: Proceed.

Mr. Strong: Mr. Hartt. [61]

RICHARD C. HARTT (Recalled)

Direct Examination (Resumed)

Mr. Strong: May I have these documents marked for identification as the Government's next exhibit in number? There are seven slips stapled together.

The Clerk: Government's Exhibit No. 7 for identification.

(The documents referred to were marked as Government's Exhibit No. 7 for identification.)

Q. By Mr. Strong: In connection with Government's Exhibits 3, 4, 5 and 6 for identification and Government's Exhibit 1 in evidence, will you state what the custom of the Union Bank and Trust Company is as to sending out copies or originals of these ledger statements, Government's Exhibit 1, to the party whose account it is?

A. They are sent out once every three months.

Q. And in the case of Government's Exhibit 1 in evidence, was such a statement sent out, as far as you know?

A. Yes, sir.

(Testimony of Richard C. Hartt)

Q. And to whom would that be sent, if you know?

A. That would be sent to the West Coast Supply Company.

Q. Did you at any time after the sending of the statement, the original or duplicate of Government's Exhibit 1, receive any complaint or any statement or any information from anybody at the West Coast Supply Company to the effect [62] that these amounts of sugar shown charged here, which you have checked off as represented by the checks, Government's Exhibits 3, 4, 5, and 6 for identification, were improperly charged against the West Coast Supply Company account?

Mr. Carr: That is objected to as asking for a conclusion of the witness, going outside the issues of the case.

Mr. Strong: I think, your Honor, it is within the issue.

The Court: Overruled, and exception noted. It may be answered.

The Witness: No.

Mr. Carr: I wasted your Honor's time, I am afraid. I am sorry.

The Court: It is proper, you will understand, for counsel on both sides to make objections to evidence, but it is the duty of a lawyer. Whether the court sustains the objection or overrules it, that is not to be considered by the jury. That is the ruling of the court. If the court excludes testimony, you are not to consider it. If the court overrules the objection, you are to consider it. But it is the duty of counsel to make objections, if they feel that evidence is not properly before the court.

(Testimony of Richard C. Hartt)

Proceed.

Q. By Mr. Strong: I show you the series of documents which have been stapled together and marked as Government's Exhibit 7 for identification. [63]

Would you please state what those are, if you know?

A. These are deposit tickets for the credit of the West Coast Supply Company on their sugar ration account.

Q. And those are deposit slips about which you spoke before in giving us a resume of the account procedure at your bank?

A. Well, these are the deposit slips which appear on the statement.

Q. Which appear on the statement, Government's Exhibit 1? A. Yes, sir.

Q. Would you look at each and every one of the deposit slips which constitute Government's Exhibit 7 for identification and state, if you know, whether those deposits were received by the Union Bank and Trust Company from the West Coast Supply Company?

A. Yes, sir.

The Court: How many deposit slips?

The Witness: Six.

The Court: All right.

Q. By Mr. Strong: The last document attached as part of Government's Exhibit 7 for identification is not a deposit slip? A. No. That is—I will just say no.

Q. What is it? [64]

A. That was a credit that we put to the account to balance the account and wipe out the overdraft that was then showing on the account.

(Testimony of Richard C. Hartt)

Q. Will you state, if you know, who inserts the details, the pencilled details, which are shown on these deposit slips?

A. I couldn't truthfully say who makes these deposit tickets up. I presume it would—

Mr. Carr: Just a moment, not what you presume; just what you know, what you did yourself in connection with these.

The Witness: We receive them as deposits.

Mr. Strong: I offer these in evidence.

The Court: Do I understand that the last page there was a deposit by the defendants here of ration stamps to balance the account?

The Witness: No, sir.

The Court: Well, I understood that to be the testimony.

Mr. Strong: No, your Honor.

Q. Would you state what this slip represents?

A. That last slip represents a credit to the account. The account was credited, through an order from the Office of Price Administration to close the account and eliminate the overdraft that then appeared on the account.

Q. That was to balance the accounts of the Union Bank?

A. Not necessarily to balance our accounts, just to close the account out. [65]

Q. Yes. As I understand it, this last slip does not represent a credit on behalf of the defendants to cover the overdrafts of which you spoke as shown on Government's Exhibit 1?

A. No, sir.

Mr. Strong: I offer these documents in evidence, your Honor.

(Testimony of Richard C. Hartt)

The Court: In evidence.

The Clerk: Government's Exhibit No. 7 into evidence.

(The documents referred to were marked Government's Exhibit 7 and introduced in evidence.)

Mr. Strong: May I have these seven ration checks marked as Government's exhibit next in number for identification?

The Clerk: Government's Exhibit 8 for identification.

(The documents referred to were marked Government's Exhibit 8 for identification.)

Q. By Mr. Strong: I show you Government's Exhibit 8 for identification and ask you if you ever saw these checks before? A. Yes, sir.

Q. Will you state what they are?

A. Sugar ration checks against the account of the West Coast Supply Company.

Q. Signed by what name?

A. Signed by Paul J. Ziegler. [66]

Q. Were those checks put through your bank?

A. Yes, sir.

Q. Were they charged against the West Coast Supply Company account? A. Yes, sir.

Mr. Carr: May I ask you to state which account as you go along, Mr. Strong?

The Court: Yes, which account?

The Witness: Well, there are—

Mr. Strong: I submit to your Honor that that does not make any difference which account. They are being offered for the purpose of balancing.

The Court: Counsel may have some point. If he has, he is entitled to know.



(Testimony of Richard C. Hartt)

The Witness: They are divided between the industrial and the wholesale accounts.

The Court: How many?

The Witness: Five of them are marked "industrial," one is marked "wholesale," one is marked "wholesale," and one doesn't have a marking.

I would have to check it on the bank records to see which account it is charged against.

The Court: Proceed, counsel.

Q. By Mr. Strong: Do you have those records here?

A. No, sir. That is prior to the records that I [67] brought, this one check.

Q. In each of these instances represented by these checks, as I understand it, the amount of sugar which is shown transferred by the check was withdrawn from the West Coast Supply Company account, as shown by the check?

A. Yes, sir.

Mr. Strong: I offer these in evidence, your Honor.

The Court: Now, the one there that—

Mr. Strong: May I withdraw that one?

The Court: Yes. If it is prior, as he says, to the time here, I do not see that we are interested in it.

Mr. Strong: I think they are all prior, your Honor.

Mr. Carr: May I inquire what the purpose of the offer is, because they are all prior to the charge, your Honor.

The Court: What is the purpose if they are prior to the time of the charge?

Mr. Strong: The purpose is to show that Mr. Ziegler was acting on behalf of the West Coast Supply Company at the time of the charge, prior to the time of the charge and at various times.

(Testimony of Richard C. Hartt)

The Court: It is limited to that, but it is quite serious if it was injected in any way into the offense alleged in this information.

Mr. Strong: It is not the purpose of the Government to use these checks as the basis of showing any overdrafts, such [68] as those alleged in the information. It is being offered for the purpose, express purpose, of showing that Mr. Ziegler, Paul J. Ziegler, whose signature appears on these checks, is the person who has been in the past drawing checks for sugar against the account of the West Coast Supply Company at the Union Bank and Trust Company.

Mr. Carr: May I just interpose this objection?

The Court: Yes.

Mr. Carr: The same objection that I made a while ago that it is not connected up to show from the criminal standpoint knowledge or participation and has nothing to do with the issues in this case.

If it is merely offered to prove the signature, that is different. But I object to it on those grounds. It raises a collateral issue.

The Court: It is offered for the limited purpose stated by the Government. In evidence.

The Clerk: Government's Exhibit 8 in evidence.

(The document referred to was marked Government's Exhibit 8 and introduced in evidence.)

Mr. Strong: May I have this document marked for identification, your Honor?

The Court: Yes.

The Clerk: That will be Government's Exhibit 9 for identification. [69]

(Testimony of Richard C. Hartt)

(The document referred to was marked as Government's Exhibit No. 9 for identification.)

Q. By Mr. Strong: Mr. Hartt, I show you a document which has been marked as Government's Exhibit 9 for identification, and ask you if you ever saw this before? A. Yes, sir.

Q. Will you state when and where and what it is?

A. This is a report that goes to the Office of Price Administration. This one in particular went on the 31st of July, 1946, showing—

Mr. Carr: Well, I think the document speaks for itself.

The Court: Yes, the document speaks for itself, unless there is something technical about it.

Q. By Mr. Strong: Is that your signature on that document? A. Yes, sir.

Q. Was that document prepared by you or under your direction? A. Yes, sir.

Q. Was it sent by you or under your direction to the OPA? A. Yes, sir.

Mr. Strong: I offer this in evidence, your Honor.

The Court: In evidence.

Mr. Carr: As I understand it, that is just a report on [70] the status of the account. Is that right, Mr. Strong?

Mr. Strong: This is labeled "Bank Report of Overdrawn Ration Account."

Mr. Carr: I object to that on the ground it has no bearing on any issue in this case. The mere fact that the bank would report there is an overdraft cannot be evidence against the defendant in this case, your Honor. Their report is not binding.

(Testimony of Richard C. Hartt)

The Court: I do not think that this bank officer could make a statement that would be binding on this defendant, counsel.

Mr. Strong: I think that if a series of acts and transactions in which participate various individuals, including bank officers, Government agents and representatives of the two defendants—

The Court: Tell me now; give me your third point so I can connect it up. Where are they connected up with this particular instrument?

Mr. Strong: This particular instrument shows on its face it is a report of overdraft against the West Coast Supply Company of a certain number of pounds of sugar.

The Court: How does that bind either of the defendants in this case?

Mr. Strong: This document may not on its face bind the defendants at this point. [71]

The Court: I will sustain the objection at this time. Proceed, counsel.

Mr. Strong: All right. That is all.

The Court: Cross examine.

Cross Examination.

By Mr. Carr:

Q. Mr. Hartt, I believe you testified that Exhibit 1 represents a statement respecting the three accounts at the Union Bank and Trust Company maintained by the West Coast Supply Company? A. Yes.

Q. Those three accounts were designated as follows: After the words "West Coast Supply Company" I notice the word "wholesale."

(Testimony of Richard C. Hartt)

On the second sheet I notice the word "industrial" at the top of the page. And on the third sheet I note the word "processing." So that these purport to represent three separate accounts? A. That is right.

Q. Now, when a check came into the bank, a sugar ration check purporting to be drawn by the West Coast Supply Company, ordinarily it had on it the designation of what account from which a withdrawal was being made, did it not?

A. Numerous times it did not. [72]

Q. I call your attention here to the Government's Exhibit 8. Do you note that on those checks after the words "West Coast Supply Co." it has the word "industrial," or some designation as to the account?

A. Yes, sir.

The Court: Now, what exhibit are you looking at?

Mr. Carr: That is Exhibit 8, your Honor.

The Court: 8. All right.

Q. By Mr. Carr: You notice that on those checks there is a designation as to what account?

A. With the exception of one check.

Q. Now, that particular: let us take that. That check is dated 4-29-46—

The Court: April 29, 1946.

Q. By Mr. Carr: —"Sugar Products Co."—"100," and then "One Hundred" written out "pounds of sugar."

It says "West Coast Supply Co., 1654 Long Beach Ave., Los Angeles 21, Calif. Paul J. Ziegler."

How did you determine which account that check would be credited or debited against? Which is the proper expression?

The Court: "Charged to," I guess.

(Testimony of Richard C. Hartt)

Mr. Carr: Sir?

The Court: "Charged against."

Mr. Carr: "Charged against."

The Witness: On any checks that came into the bank that [73] did not specify "industrial" or "processing" they were charged to the wholesale account.

Q. By Mr. Carr: You just did that, did you, as a matter of your own practice?

A. Through authority from the West Coast Supply Company because—well, that is enough. I won't say any more.

Q. Well, let me ask you: You say "authority." What do you mean by "authority"?

A. Well, on numerous occasions their accounts were mixed up because where they intended to draw a check against their industrial account they did not so mark it. We charged it against their wholesale account, and on numerous occasions the accounts were out of balance. So we took it up with them—

The Court: With whom?

The Witness: The West Coast Supply Company.

The Court: Well, who? You have to specify who.

Q. By Mr. Carr: Who?

The Court: With whom did you take it up?

The Witness: Now, I presume with the bookkeeper. I couldn't say definitely that it was Paul Ziegler or Allan Ziegler or anybody else. I don't know. But they told us—

Mr. Carr: Well, now, I submit, if your Honor please, he cannot say who they are unless he identifies them.

The Court: Give us your best recollection, if you can.



(Testimony of Richard C. Hartt)

The Witness: My best recollection is that Mr. Ziegler, [74] Mr. Paul J. Ziegler, came up to my office one day.

Q. By Mr. Carr: When was this?

A. Well, I would imagine in the early part of '46.

Q. Well, January, February?

A. Maybe in February.

Q. Who was present at the time? Did you have a conversation? A. Myself.

Q. You had a conversation with him? A. Yes.

Q. And you say that he gave you some instructions at that time?

A. Well, the accounts were, as I say, mixed up. I told him they had forgotten to specify which account some of the checks were to be charged to.

If my memory serves me correctly, it was Mr. Paul Ziegler who said, "Anything that does not specify 'Industrial' or 'Processing' charge those checks to the wholesale account."

Q. And you did that thereafter? A. Yes, sir.

Q. This exhibit No. 2 in evidence, Government's Exhibit No. 2, except for being a ration banking authorized signature card, is the usual card you have at the bank, is it not? A. Yes, for ration accounts only.

Q. But I mean it is similar to the cards that you have [75] in ordinary banking, is it not?

A. Yes, sir.

Q. All right. Now, I notice at the top of the card it says "West Coast Supply Co.," and then the words "Manufacturing Dept." which are marked out.

Do you know who marked that out?

A. I could not say that I do.

(Testimony of Richard C. Hartt)

Q. Do you know why it was marked out?

A. Why, I presume that they didn't have a manufacturing department at the West Coast Supply Company.

Q. Well, now, Mr. Hartt, I do not mean to be discourteous; but I don't want your presumption. Do you know why it was—

A. No, sir.

Q. Now, over on the right-hand—

The Court: Did you mark it out?

The Witness: No, sir.

Q. By Mr. Carr: On the right-hand part of the card, the upper corner, I notice it says "Processed Foods." Then it says "sugar 2-5-43."

Is that the date the account was opened for sugar?

A. Yes, sir.

Q. Then it has some initials "M. F. . . ." What is that?

A. Meats, fats, fish and cheese.

Q. In other words, it covered all of those items? [76]

A. All of the rationed commodities.

Q. Yes. Now, under the printing "Authorized Signatures" and over on the left-hand side it says "Name and Title (Print)."

You have in typewriting there "Raymond Ziegler Managing Partner"?

A. Uh-huh.

Q. Who put that on there, do you know?

A. No, sir.

Q. Do you know who put the typing on here "J. H. Ziegler"?

A. No, sir.

Q. Do you know who put the printing in ink on it, "Paul J. Ziegler"?

A. No, sir.

Q. Do you know who put on here in typing "Paul M. Fox"?

A. No, sir.

(Testimony of Richard C. Hartt)

Q. Then over here you have a signature under the word "Signature" in handwriting. It says "Raymond Ziegler" opposite the words "Managing Partner."

You did not see him sign that, did you?

A. No, sir.

Q. But you did accept as his signature for that partnership?

A. Yes, sir.

Q. And, as I understand it, you accepted that merely [77] as the signature on a ration check, and that is all?

A. Yes.

Q. You had no document filed with you showing who the partners might be of this particular concern?

A. Not to my knowledge.

Q. You do not know, for example, whether the signature "Paul M. Fox"—whether he is a partner or an employee or just who he is?

A. No, sir.

Q. As a matter of fact, you do not know whether Paul J. Ziegler is a partner or not, do you?

A. No, sir.

Q. Now, I want to direct your attention to Exhibit No. 5 for identification, Government's Exhibit 5.

That is a check dated 7-1-46. It is made out to the Streckels Sugar Co. It is in pen and ink, except when you get down to the words on the first line it says "Print or Type Name of Your Account."

Then there appear the following: "West Coast Supply Co."

When a check came to your account to be cleared in the bank, signed in that fashion, how did you determine whether or not that check was executed by the authority

(Testimony of Richard C. Hartt)

of the West Coast Supply Company? Did you make any inquiry at all? A. Never do. [78]

Q. Just accept the check on its face?

A. Yes, sir.

Q. And you don't know whether or not those words were written in after that check was executed, do you?

A. No, sir.

Q. How long have you been with the bank?

A. 11 years.

Q. In that position have you had considerable experience with handwriting? A. Yes, sir.

Q. In general, in what departments have you worked, sir, while you have been there?

A. Well, I have been a savings teller, a note teller, general ledger bookkeeper, manager of the savings department, chief clerk, manager of the adjustment department.

Q. Those duties have also encompassed a pretty complete study of handwriting? A. Yes, sir.

Q. So that it is your business when checks pass over your counter, for instance, as a savings teller, you have to make it a practice of checking handwriting, do you not? A. Well, yes.

Q. From your experience are you able to discern the difference in handwriting?

A. To discern a difference in handwriting? [79]

Q. Yes. For instance, if two types of handwriting appear on a check, from your experience would you be able to discern that difference?

A. Well, fairly well.

Q. All right. I will show you Exhibit No. 5 here, Government's Exhibit No. 5 for identification. I want

(Testimony of Richard C. Hartt)

you to look now at all of the handwriting on the check. You will notice it says "7/1" and the "six" is in pen.

"Spreckels Sugar Co." is in pen and ink. "Thirty Thousand" is in pen and ink written out, and "30,000" in figures.

You will note that "West Coast Supply Co." is also written out, and beneath it "Paul J. Ziegler" is written in ink.

From looking at that check can you say whether or not the handwriting, representing "West Coast Supply Co." is different from the handwriting in the rest of the check?

Mr. Strong: That is objected to, your Honor. This man is not a handwriting expert. He is a layman.

If there is any question of sameness or difference in handwriting, there ought to be a handwriting expert here.

I think that the jury itself is just as well qualified to determine the similarity or difference as is any lay witness, regardless of how extensive his lay experience is. I think if there is any problem of technical detection of [80] differences, that should come only through a handwriting expert.

I object to that question.

Mr. Carr: May I answer that, your Honor?

The Court: Yes.

Mr. Carr: It is common knowledge, as it is the law, that you can even pass up a signature to a juror, pass on comparative signatures to determine whether or not they are identical. This man is qualified, I think, as a man who has worked in a bank over a period of years. And one of the qualifications of a teller, a banker, is to know handwriting and signatures.

(Testimony of Richard C. Hartt)

I think that it is sufficient for whatever weight it may have with the jury.

Mr. Strong: If your Honor please, I think for any weight with the jury, the jury should examine the document. The expert evidence is only a guide for the jury, and the jury may reject it.

I do not think a lay witness should be called upon to testify to the similarities or differences in handwriting.

The Court: I shall permit him to answer. You may answer.

The Witness: I want to answer in this manner: that there is not handwriting where the "West Coast Supply Co." takes place. It is printed. [81]

Q. By Mr. Carr: Well, it is written by hand.

A. It is printed by hand which, to me, is not handwriting.

Q. Can you distinguish or can you tell from looking at that, from your experience, whether or not the writing indicates it is written by the same person?

A. I cannot.

Q. Did you personally make the decision as to a check that came in, for instance, that did not have "industrial" or "processing" or "wholesale" on it as to which account you should charge that check against?

A. Mr. Paul Ziegler did.

Q. I do not understand you. When the check came into the bank?

A. If it was specified on the check that it was to go to the Processing or Industrial account, Mr. Paul Ziegler is the one who said, "Charge all of those to the wholesale account."



(Testimony of Richard C. Hartt)

Q. Did you give those instructions at the bank?

A. Yes, sir.

Q. To whom? A. To the bookkeeper.

Q. Were they written or just oral instructions?

A. What's that?

Q. Written or oral instructions? [82]

A. Oral.

Q. Is it customary that the bank give oral instructions? A. Yes, sir.

Q. As to which account a check should be charged against? A. Yes, sir.

Mr. Carr: May I have just one minute, your Honor?

The Court: Yes.

(Brief pause in the proceedings.)

Q. By Mr. Carr: Mr. Hartt, was there a prior signature card to this Government's Exhibit No. 2?

A. I do not know.

Q. Have you any way of—

A. I can check and find out.

Q. I see. I am speaking now with reference to Government's Exhibit No. 7 for identification.

I believe this is in evidence. I am not sure. Isn't it?

Mr. Strong: Yes.

The Court: Mr. Cross, is Exhibit 7 in evidence?

The Clerk: Exhibit 7 is for identification, your Honor.

The Court: All right. Those are the deposit slips.

Mr. Carr: I see.

Q. I show you here and call your attention to the last ration deposit slip "West Coast Supply Co. (wholesale acct.)—8-30-46." [83]

Do you know in whose writing that is?

A. Yes, sir.

(Testimony of Richard C. Hartt)

Q. Whose? A. My secretary.

Q. And she wrote that deposit slip out and credited the West Coast Supply Company with 1,351,804 pounds?

A. Yes, sir.

Q. For the period prior to July 1, 1946, say, April, May and June, did not the OPA subpoena the checks from that account somewhere along in that period?

A. No, sir.

Q. Did you have all of the cancelled checks that had been charged against the account up to July 1st on July 1st?

A. Yes. They were down in our statement files.

Q. When did you turn those over to the Government?

A. I don't recall the exact date.

Q. Was it after July 1st?

A. I am pretty certain it was.

Q. Well, I notice this Exhibit No. 1 in evidence, Government's Exhibit—

The Court: The ledger sheets?

Mr. Carr: The ledger sheets, yes, your Honor.

Q. —is dated June 1, 1946. Is that right?

A. June 1.

Q. So the account was apparently closed out by a credit [84] on August 30, 1946? A. That is right.

Q. Now, to do that, could you do that without having the cancelled checks? Could you balance the account without having the cancelled checks? A. Oh, yes.

Q. How would you do that?

A. Well, we just write off the balance, the overdraft balance.

(Testimony of Richard C. Hartt)

Q. How would you arrive at the over balance if you didn't have the cancelled checks?

A. Well, we had all of these cancelled checks appearing on this statement.

Q. I see. You are not sure, are you, Mr. Hartt, about the OPA subpoenaing the checks, for example, in Government's Exhibit 8 in evidence?

A. No.

Q. You do not know whether they were taken out of the bank or not by the OPA?

A. I can't recollect right now. I can check on it and find out.

Mr. Carr: May I, your Honor have him to inquire? He could call me by telephone and tell me. It may be that it will be necessary to recall him.

That is all. [85]

The Court: You can advise counsel on both sides if you find any other instruments such as has been designated by counsel.

Anything further, Mr. Strong?

Mr. Strong: Yes, your Honor.

Redirect Examination.

By Mr. Strong:

Q. As I understand it now, you paid these checks, which are Government's Exhibits 3, 4, 5 and 6 for identification? Your bank charged these against the West Coast Supply Company account on the basis of the signature card, is that right?

A. Yes, sir.

Q. That was your authority for paying these checks?

A. Yes, sir.

Mr. Carr: I object to that as calling for a conclusion of the witness.

(Testimony of Richard C. Hartt)

The Court: Well, that is not a conclusion. I should think, Mr. Carr, that probably is an act and why he did it.

Mr. Carr: Why he did it, yes, your Honor. But he is asking now about the word "authority": "your authority."

I object to the use of the term "authority."

Q. By Mr. Strong: Is that why you did it?

A. Yes, sir.

Q. The slip here, which has been discussed and which [86] is part of the Government's Exhibit 7 for identification, the last slip which shows a credit to the account of the West Coast Supply Company, would you explain that a little more fully, where you got that amount of points and where it came from and what it is?

A. Well, after the posting of all of these checks the account became overdrawn in the amount of 1,351,804 pounds of sugar. We had a form from the Office of Price Administration authorizing us to credit that account and close it out. We pass a credit to the account. Our offsetting debit goes to a miscellaneous column on our records.

Q. Did you receive any of the deposit slips from either of the defendants in the form of these other documents which are part of Government's Exhibit 7 for identification to cover this amount of 1,351,000-some odd pounds? A. No, sir. Those were all prior.

Q. But you received none from the defendants, is that right, for that particular sum? A. No, sir.

Q. So that this sum of 1,351,804 pounds came directly from the OPA? A. Yes, sir.

(Testimony of Richard C. Hartt)

Q. And it did not come to you through the defendants?  
A. No, sir.

Q. They did not make a deposit— [87]

The Court: Now, he answered that four or five times, counsel.

Mr. Strong: I was a little confused, your Honor, because this is the first time I had seen. I am sorry if I asked too many questions.

The Court: That is why I asked the first question about it when I saw it.

Mr. Strong: At this time, your Honor, I should like to offer in evidence Government's Exhibit 7 for identification which contains the ration deposit slips.

Mr. Carr: I think they are already in evidence.

The Court: In evidence.

The Clerk: Government's Exhibit 7 in evidence.

(The documents referred to were marked Government's Exhibit No. 7 and introduced in evidence.)

Mr. Strong: That is all.

The Court: Mr. Carr?

Mr. Carr: That is all.

The Court: That is all, thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Strong: Miss Colesworthy.

The Court: Give us the spelling, Mr. Strong, for the record.

Mr. Strong: Yes. C-o-l-e-s-w-o-r-t-h-y. [88]

## MILDRED E. COLESWORTHY,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Court: State your name and your position.

The Witness: Mildred E. Colesworthy, housewife.

The Court: Proceed.

## Direct Examination.

By Mr. Strong:

Q. Mrs. Colesworthy, were you ever employed by an OPA ration board? A. Yes.

Q. When was that? A. From 1942 until 1946.

Q. Will you speak up a little louder?

A. From 1942 to 1946.

Q. What board was that?

A. Board 518, located at 1519 North Gardner.

Q. Who were the members of that board while you were there?

A. Do you want to know all of them?

Q. Well, let me put it this way: was the defendant, Paul J. Ziegler, a member of that board?

A. Yes, he was.

Mr. Carr: I don't know possibly what the purpose of such [89] testimony is. Suppose he was a member of the board?

I object to this as being wholly immaterial. It has no bearing whatsoever on the issues in this case.

Mr. Strong: It has a dual bearing: One, on willfulness; two, on identification of signatures which I will proceed to after I qualify this witness, with your Honor's permission.

The Court: Proceed.



(Testimony of Mildred E. Colesworthy)

Mr. Carr: On the identification of signatures I do not object, your Honor. I will concede to that.

The Court: All right.

Mr. Strong: May I have the question read to the witness?

(Question read by the reporter.)

Q. By Mr. Strong: During what period?

A. Well, I believe it was from about 1942 to 1943. I am not sure.

Q. During that time—

Mr. Carr: To save time I will stipulate to her qualifications to know Mr. Ziegler's signature, if that will save any time.

The Court: All right. Show the instruments to the witness, then.

Mr. Strong: Yes.

Q. I show you Government's Exhibits Nos. 3, 4, 5 and 6 for identification and ask you whether you recognize the signature at the bottom of each of those documents?

[90] A. I do.

Q. Whose is it? A. Mr. Ziegler's signature.

Q. You mean the defendant Paul J. Ziegler?

A. Yes.

Q. On each of these four documents? A. Yes.

Q. I show you Government's Exhibit 8 in evidence and ask you if you recognize the signature on the bottom of each of the checks comprising that exhibit.

Mr. Carr: I will save you time and stipulate, if you will show them to me, on just his signature. My stipulation, of course, only relates to the—

The Court: Identification of the signature?

(Testimony of Mildred E. Colesworthy)

Mr. Carr: —Paul J. Ziegler, nothing about it, your Honor.

The Court: All right.

Mr. Carr: Yes, I will stipulate that that is his signature. But I am not stipulating that the thing above it was put on there by him.

I will stipulate that just the writing "Paul J. Ziegler" is his signature but no stipulation with reference to the rest of the card.

Mr. Strong: That is as to Government's Exhibit 2, your Honor. [91]

The Court: It is so understood.

Mr. Strong: May I have a minute and approach counsel with additional documents?

The Court: Yes.

(Brief pause in the proceedings.)

The Court: While counsel is examining the records, pass to the jury whatever instruments have been introduced in evidence and received in evidence.

Mr. Strong: Yes, your Honor.

(Documents passed by counsel to the jury.)

Mr. Strong: Pursuant to your Honor's instruction, I am passing to the jury Government's Exhibit 1, Government's Exhibit 2, Government's Exhibit 7 and Government's Exhibit 8.

The Court: All have been introduced in evidence?

Mr. Strong: All have been introduced in evidence.

The Court: All right.

Mr. Carr: I will stipulate that on the documents counsel is now binding together, your Honor, only the words "Paul J. Ziegler" are his signature.

The Court: It is so understood.

(Testimony of Mildred E. Colesworthy)

Mr. Strong: May I have these documents marked for identification?

The Clerk: Government's Exhibit No. 10 for identification.

(The documents referred to were marked Government's Exhibit No. 10 for identification.) [92]

Q. By Mr. Strong: Are you familiar with the handwriting of the defendant Paul J. Ziegler?

A. I have seen him sign his signature.

Q. Did you see him write anything else?

A. No, not that I know of.

Mr. Strong: That is all.

The Court: Any cross examination?

Mr. Carr: No cross.

The Court: That is all, thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Strong: Albert F. Leland.

May I approach counsel for a moment?

The Court: Yes.

ALBERT F. LELAND,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Albert F. Leland.

Direct Examination.

By Mr. Strong:

Q. Mr. Leland, what is your occupation?

A. I am a food broker, Mr. Strong. I am employed by [93] Mailliard & Schmiedell.

(Testimony of Albert F. Leland)

Q. Are you acquainted with the defendant Paul J. Ziegler?      A. Yes, sir.

Q. Are you acquainted with the defendant West Coast Supply Company?      A. Yes, sir.

Q. Have you, prior to July 1, 1946, had any dealings with either the defendant Paul J. Ziegler or West Coast Supply Company?      A. Yes, sir.

Q. Dealings in what nature?

A. Well, dealings in our general brokerage business and on sugar.

Q. Are you sugar brokers?

A. Well, general brokers. We are sugar brokers and molasses and many other items.

Q. Did you sometime in July of 1946 receive an order from either or both of the defendants in this case for the purchase or rather sale by you of 600,000 pounds of sugar?      A. Yes, sir.

Q. About when was that?      A. About July 1st.

Q. Will you state which of the defendants, which individuals, you talked to on that occasion, who was present and where the conversation took place? [94]

A. I talked to Mr. Paul Ziegler, and the conversation took place at the West Coast Supply Company's office.

Q. How did you happen to be there?

A. Well, earlier that day I received a wire from the head of my sugar company, the Union Sugar Company, quoting a Mr. James H. Marshall to the effect that sugar—

Mr. Carr: Well, just a moment. I object to any quoting of any third party.

The Court: Sustained.

Mr. Strong: If your Honor please, may I be heard?

(Testimony of Albert F. Leland)

The Court: I do not believe it is proper to have a conversation with some third party that was not in the presence of these defendants.

Mr. Strong: This is a wire which he read to the defendant. It goes to willfulness.

The Court: If you connect that up, of course it is admissible.

Q. By Mr. Strong: Is this something that you told or read to the defendant? A. Yes, sir.

Q. Which defendant? A. Mr. Paul Ziegler.

Q. Continue.

A. I read the wire to Mr. Ziegler—

The Court: You had better show it to counsel for the [95] defendant and mark it for identification so counsel will know what you are examining about.

The Clerk: Government's Exhibit 11 for identification.

(The document referred to was marked Government's Exhibit No. 11 for identification.)

Q. By Mr. Strong: I show you Government's Exhibit 11 and ask you whether this is the wire which you were just discussing?

A. Yes, sir. That is a copy of the original wire I read on July 1st to Mr. Paul Ziegler.

Mr. Strong: I offer that in evidence, your Honor.

Mr. Carr: Well, I should like to have some foundation. You are supposed to offer the original.

The Court: Lay your foundation.

Q. By Mr. Strong: Will you read this wire to yourself and state whether these are the words which you read to the defendant on that occasion?

(Testimony of Kenneth E. Pool)

A. (Examining document.) These are the words I read to the defendant, sir.

Q. By examining that document has your recollection been refreshed as to those words?

A. Yes, sir.

Q. Will you please state what you read to the defendant?

Mr. Carr: The telegram shows that.

The Court: The telegram speaks for itself. You may read [96] it. Read it into the record, counsel.

The Witness: This is a telegram sent to the Union Sugar Company forwarded to us as sugar brokers, as follows:

“PENDING FURTHER ACTION BY CONGRESS ON PRICE CONTROL REQUEST THAT ALL PROCESSORS REFINERS AND IMPORTERS CONTINUE SELLING AT PRICES IN EFFECT JUNE 30. COMMODITY COMMITMENTS UNDER OUTSTANDING CONTRACTS AND PROGRAMS WILL FURNISH BASIS FOR CONTINUING OPERATIONS UNTIL FURTHER SITUATION IS CLARIFIED. CONGRESS HAS AUTHORIZED COMMODITY CREDIT TO CONTINUE ITS 1946 SUGAR PROGRAM AND HAS SHOWN WILLINGNESS AUTHORIZE 1947 SUGAR PROGRAM. WILL APPRECIATE REPLY BY TELEGRAM AS TO YOUR POLICY. IN VIEW EXTENSION SECOND WAR POWERS ACT RATIONING AND ALLOCATING SUGAR AND MOLASSES CONTINUE IN EFFECT UNCHANGED.

“SIGNED BY JAMES H. MARSHALL, DIRECTOR.”



(Testimony of Albert F. Leland)

The Court: What is the date of that?

The Witness: July 1st.

The Court: Approximately when did you read it to the defendant?

The Witness: Sometime between 10:00 in the morning and noon.

The Court: What date?

The Witness: On July 1st.

Mr. Carr: I am going to move to strike that, not being [97] binding at all on the defendant, even if read to him.

It does not go to show intent because what some third party may think of whether the OPA was still in effect or not is not binding on this defendant.

Mr. Strong: If your Honor please, there is not any question of anything binding on the defendant involved in this telegram. The question is whether this defendant acted willfully. I think that every bit of evidence which tends to show that he knew what he was doing is evidence which is in support of the term "willfully" in the statute.

The Court: I think it goes more to the weight of the testimony rather than to the admissibility.

For that reason I shall deny the motion to strike. I believe under the new rules all have exceptions to the ruling.

Mr. Carr: That is right, your Honor.

The Court: So we do not have to note it in the record. If there is any error about it, I shall allow exceptions to all my rulings to both sides.

Mr. Strong: That is in evidence, your Honor?

The Court: Yes.

The Clerk: Government's Exhibit 11 in evidence.

(Testimony of Albert F. Leland)

Mr. Carr: Well, now, I did not understand that the telegram was in evidence. I understood that his testimony is in the record without the telegram.

The Court: It is more convenient, I suppose, for counsel [98] to have it in the record as an exhibit if further proceedings should be taken, Mr. Carr.

Mr. Carr: That is true, your Honor, it is more convenient.

Mr. Strong: I will withdraw it, your Honor.

Mr. Carr: I hate to waive so many of these fundamental rules.

The Court: The Government is willing to withdraw it; so it is withdrawn.

Mr. Strong: As I understand, the reading of the telegram stands?

The Court: It is in the record.

Q. By Mr. Strong: Did you on that same occasion have any discussion with the defendant Paul Ziegler regarding the purchase of 600,000 pounds of sugar?

A. Yes, sir.

The Court: How long will this witness take, counsel?

Mr. Strong: Well, I think he will finish within the next five minutes.

The Court: All right. But we have cross examination, too.

Mr. Strong: May I proceed?

The Court: Yes.

Q. By Mr. Strong: Will you state what that conversation was?

A. Well, Mr. Ziegler said if I would come over, he would [99] give me a check for 6,000 bags of sugar to be delivered. So in the afternoon I went over and picked

(Testimony of Albert F. Leland)

up the sugar check and took orders for delivery of approximately 2,800 bags that afternoon. Then there was to be a balance stored at the Union Sugar Company in Betteravia under our regular storage arrangement. I picked up the sugar check, turned it into my office, to my secretary, and ordered out the sugar for the West Coast Supply Company. And that sugar was delivered and that was then paid for, and that was the transaction.

Mr. Carr: Just a moment. Your Honor, I think he is making a statement that may be on the surface a conclusion, and I object to this traveling over the whole field there.

The Court: Yes.

Mr. Strong: May we strike his answer? And we will start again.

The Court: Yes. I think counsel is right. It may be proper, but we do not know.

Q. By Mr. Strong: All I want to know is the conversation you had with Mr. Ziegler after you read the telegram to him.

Did you have any conversation with him as to any order for sugar? A. Yes.

Q. Will you state what he said and what you said on that occasion? [100]

A. Mr. Ziegler said he would give me an order for 6,000 bags of sugar. I thanked him for it, and he told me that I could pick up the check in the afternoon, which I did.

Q. Just a minute. Was that the end of the conversation in the morning? A. Yes.

Q. Will you state how many pounds each bag of sugar is? A. 100 pounds.

(Testimony of Albert F. Leland)

Q. That was all there was to that conversation?

A. Yes, sir.

Q. Did you come back that afternoon?

A. I went to Mr. Ziegler's office that afternoon to pick up the ration check.

Q. Which Mr. Ziegler? A. Mr. Paul Ziegler.

Q. I show you Government's Exhibit No. 6 for identification and ask you if you ever saw this document before? A. Yes, sir.

Q. Will you state when and where you saw it?

A. I saw it in Mr. Paul Ziegler's office the afternoon of July 1st.

Q. Is that the check that he gave you?

A. Yes, sir.

Q. What did you do with it?

A. Turned it into my office for forwarding to San [101] Francisco.

Q. Will you look at that check and state whether it appears now on its face the same as it did when you got it from Mr. Paul J. Ziegler, as far as you can recall?

A. I can recall that it did not have "West Coast Supply Co." on it.

Q. That is the typed portion? A. Yes, sir.

Q. Did it have the rest? A. Yes, sir.

Q. Did you insert the words "West Coast Supply Co."? A. No, sir.

Q. Do you know who did? A. I do not, sir.

Q. Did you subsequently make out any orders or forms of orders or invoices in connection with the purchase of the 600,000 pounds of sugar?

A. I didn't personally. My office did.

(Testimony of Albert F. Leland)

Q. You ordered them made out?

A. Yes, sir.

Q. Who made them out?                    A. Miss Damon.

Mr. Carr: Your Honor, I think I can save time on this next item, if counsel will permit me to interrupt.

Mr. Strong: Yes, surely. [102]

Mr. Carr: May I interrogate the witness just one or two questions?

The Court: Yes.

Voir Dire Examination.

By Mr. Carr:

Q. I understand that these are photostats of records—these are the original records of your company, is that right?                    A. Yes, sir.

Q. And kept in the ordinary course of business?

A. Yes, sir. This is a duplicate of the original copy.

Q. Can you tell that they are accurate? Do you know if they are accurate? If they are, why, we won't raise any question as to the foundation.

If Mr. Strong will make the statement, your Honor, that those are copies of actual records of that concern kept in the ordinary course of business, I shall raise no objection to them insofar as the foundation is concerned.

Mr. Strong: I will so state.

The Court: Is that your recollection?

The Witness: I would state to the best of my knowledge that they are correct, sir.

The Court: All right. The stipulation will be approved.

Mr. Carr: Those are just the shipments of sugar, is that right? [103]

(Testimony of Albert F. Leland)

Mr. Strong: These documents constitute the papers which go to completing the shipment of 600,000 pounds of sugar which was ordered through this witness for the West Coast Supply Company.

Mr. Carr: I raise no question as to the foundation.

The Court: All right. In evidence. The stipulation will be approved.

The Clerk: That will be Government's Exhibit 12 in evidence.

(The document referred to was marked as Government's Exhibit No. 12 and introduced into evidence.)

Mr. Carr: Counsel states to me he has photostatic copies here of the freight bills and delivery receipts from the Union Terminal Warehouse. And I want to say in open court that I understand, Mr. Small, those are the same that I looked at.

Mr. Strong: The name is "Strong." They are the same as you looked at and are photostatic copies of the originals.

Mr. Carr: If he states as counsel in this case that these photostatic copies were taken and they were kept in the regular course of business of these two concerns, I won't require the witness to lay the foundation.

Mr. Strong: I have the originals in court and have the witnesses for examination.

The Court: The stipulation will be approved. [104]

Mr. Carr: I am merely stipulating to eliminate the calling of witnesses.

The Clerk: Government's Exhibit 13 in evidence.

The Court: 12 are the invoices?

Mr. Carr: 12 are the invoices.



(Testimony of Albert F. Leland)

The Court: 12 are the instruments now before the clerk.

Mr. Strong: 13 has the freight bills and station records showing transfer of sugar.

Mr. Carr: Freight bills, and what do you call them?

Mr. Strong: Freight bills and station records. 14 are delivery receipts showing delivery of the sugar to the West Coast Supply Company.

The Clerk: These are Exhibits 12, 13 and 14 in evidence, respectively.

Mr. Carr: Have they gone into evidence? No, I didn't understand so.

The Court: I shall permit any objection you have.

Mr. Carr: Well, your Honor, my objection is simply this: that on the testimony now disclosed by the witness he has testified that the West Coast Supply Company is not on that check, and this makes these documents wholly irrelevant, not admissible.

Mr. Strong: I submit to your Honor that is wholly immaterial whether the name "West Coast Supply Company" is or is not on the check. The Government charges that these checks [105] were issued or caused to be issued by and on behalf of this company, and whether they are complete in a technical sense from a negotiable instrument standpoint or not is entirely immaterial.

If the defendants, or either of them, by their action caused somebody else to insert that name, they are just as liable for that insertion as though they did it themselves. There is no requirement, as a matter of fact, that we show that "West Coast Supply Company" was on there or was not on there.

(Testimony of Albert F. Leland)

These people that received these checks received them in connection with the purchase of sugar from the West Coast Supply Company for the delivery of sugar to the West Coast Supply Company, and they are certainly documents which were ration documents which in this case were handed by one of the defendants to the person on the stand to cover that particular purchase of 600,000 pounds which was delivered to the West Coast Supply Company.

Mr. Carr: Your Honor, I want to be sure that I do not leave anything undone. I think I ought to take this opportunity to point out that in the very ration order which these defendants allay you find some definitions. You find on the last page, your Honor, section 24.1, "definitions," "check," paragraph (5):

"'Check' means a sugar ration check, in the form pre-[106] scribed by the Office of Price Administration, drawn by a depositor. . ."

If it was not drawn by the West Coast Supply Company, it was not drawn by the depositor.

". . . drawn by a depositor against his account and made payable to the account of a named person."

That is the specific definition.

Let me just read you one or two other definitions:

"'Depositor' means a person who has a ration bank account. . ."

The only testimony here is that the West Coast Supply Company had a ration account, not Ziegler.

"A person shall be deemed a separate depositor with respect to each of his accounts."

Now, turning over to the next page and getting to section (15) of the Ration Order, the word "Issue."

(Testimony of Albert F. Leland)

“‘Issue’ when used with respect to a check, means the delivery of a completed check to the person to whose account the check is made payable.”

I submit that the testimony here is there was no West Coast name on the check. There is no evidence that Ziegler has an account. The check was not completed when it was issued. It is not a check within the meaning of the Ration Order.

Mr. Strong: I submit, your Honor, that if that is all [107] true, then we are now witnessing a very simple device for obtaining sugar without ration currency.

Mr. Carr: That isn't the charge. Just a moment. He is not charged here, your Honor, with using any device for obtaining sugar.

There are specific charges in this case. We are here to meet those charges, not some other charges.

The Court: I think it is a matter of argument, gentlemen, for this reason: That is testimony here which shows that there was no objection made to the bank when they were advised of the withdrawal of sugar rationing against the account. I think that would be a matter of argument by the defense and by the Government as to whatever interpretation they desire on it.

I will overrule the objection.

Mr. Strong: As I understand, these three documents—12, 13 and 14—are now in evidence?

The Court: In evidence, subject to the objection of Mr. Carr.

(The documents referred to were marked Government's Exhibits Nos. 12, 13 and 14 and were introduced in evidence.)

(Testimony of Albert F. Leland)

Mr. Strong: May I have that statement read? I did not hear you.

(Record read by the reporter.)

Mr. Carr: Are you speaking with reference to 12, 13 and [108] 14?

The Court: 12, 13 and 14.

Mr. Strong: Your Honor, I see it is nearly 5:00 o'clock. I do not think the cross examination will be finished by 5:00.

The Court: That is what I was fearful of when I made the suggestion a few minutes ago.

Ladies and gentlemen of the jury, remember the admonition I have heretofore given you. Do not discuss this matter among yourselves and do not permit anyone to discuss it with you. Do not discuss the merits of the controversy until it is finally submitted to you under the instructions of the court.

We will take a recess until 10:00 o'clock tomorrow morning.

Mr. Carr: May we have the witnesses brought back and instructed to return? Or may I say that to them on your behalf.

The Court: I think they will return if you express that for the court.

Mr. Carr: Thank you.

(Whereupon, at 5:00 o'clock p. m. an adjournment was taken until 10:00 o'clock a. m., February 5, 1947.)

Los Angeles, California, Wednesday, February 5, 1947,  
10:00 A. M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 19,106 Criminal,  
United States against West Coast Supply Company, a  
partnership, and Paul J. Ziegler, for further jury trial.

Mr. Strong: Ready for the Government.

Mr. Carr: Ready for the defendants.

The Court: Stipulate the jury is present?

Mr. Carr: So stipulated.

Mr. Strong: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Strong: So stipulated.

The Court: You may proceed.

Mr. Strong: Your Honor, may I at this time, before  
I put the witness back on the stand, call another witness  
who is ill at this time?

The Court: You may proceed.

Mr. Strong: Mr. Pool.

KENNETH E. POOL,

called as a witness by the Government, being first duly  
sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Kenneth E. Pool, P-o-o-l. [110]

Mr. Strong: I think there are two witnesses in the  
court room, your Honor. I believe they should be ex-  
cluded.

The Court: Are there any witnesses testifying on  
either side of this case in the court room? The bailiff  
will show you where you may retire to. And the bailiff  
will excuse you.

(Testimony of Kenneth E. Pool)

Mr. Carr: You don't need to excuse Mr. Leland who was on the stand.

The Court: He has testified already.

Mr. Carr: We don't insist on his leaving.

The Court: You may remain, then.

Direct Examination.

By Mr. Strong:

Q. What is your occupation?

A. I am employed by the State Department of Public Health, bureau of Food and Drug Section as an inspector.

Q. How long have you had that job?

A. Since January the 29th, 1936. That is 11 years.

Q. In your capacity which you have just described have you ever had occasion to deal with the defendant Paul J. Ziegler?

A. I have.

Q. Did you ever discuss with Mr. Paul J. Ziegler what his capacity is in the West Coast Supply Company?

A. Yes, sir, I have, on several occasions. [111]

Q. When was the first time that you discussed it with him?

A. September 13, 1943.

Q. Was that in connection with a proceeding of any kind?

A. That was in connection with an inspection made of the factory at that time and the subsequent destruction of some nut meats that were contaminated with filth.

Q. What factory was that?

The Court: I think that—

The Witness: West Coast Supply Company.

Mr. Carr: May I inquire, what is the purpose of this testimony?



(Testimony of Kenneth E. Pool)

The Court: I do not suppose that counsel on either side could be asked to disclose.

Mr. Carr: I will object, wholly collateral, collateral issues. It is raising issues that are not involved in the indictment, and it is working solely for the prejudice of this defendant to bring up something about some complaint or something to do with some food and drug or health department matter.

The Court: That part of it may be stricken out. But your request that he disclose at this time what the witness is going to testify to will be denied.

The other matter will be stricken out. [112]

Mr. Strong: We are not interested in the other matters, your Honor.

The Court: All right, it is stricken out. The jury is instructed to disregard it.

Q. By Mr. Strong: Who was present at the time of that discussion with the defendant Paul J. Ziegler?

A. Who was present besides Mr. Ziegler, you say?

Q. Yes, and you. A. No one else.

Q. Where did it take place?

A. It took place on the premises of the West Coast Supply Company at, I think it is, 1252 Long Beach Boulevard. I can give you the exact address here. 1654 Long Beach Boulevard.

Q. With reference to Mr. Ziegler's capacity in the West Coast Supply Company, will you state what you said and what he said?

Mr. Carr: I object to that as being far beyond the time this crime charged here is in 1946. He has related a conversation back in 1943. I object to it as being wholly without the issue of the case, premature and—

(Testimony of Kenneth E. Pool)

The Court: I will sustain that objection. This is 1943. We are not interested in what the relation was in 1943.

Mr. Strong: Your Honor, may I submit if we establish a relation once existing, I believe that there is a presumption [113] that it continues.

The Court: Not in a criminal case.

Q. By Mr. Strong: Did you have conversation—

The Court: There is no presumption against a defendant in a criminal case.

Mr. Strong: Not a presumption against a defendant but a presumption of continuing fact.

The Court: That would be against him, counsel. I will sustain the objection.

Q. By Mr. Strong: Did you have any conversations with the defendant at any more recent date regarding the status of the West Coast Supply Company?

A. January the 11th, 1944, was the next occasion.

Q. What was the last occasion?

A. The last one in March 13, 1945.

Mr. Strong: I submit, your Honor, I wanted to ask the same question as to that date.

The Court: March, 1945?

Mr. Carr: The same objection, your Honor.

The Court: No, I shall permit that. That is near enough to the period here.

Mr. Carr: May I further object on the ground that you cannot prove a partnership by any act or declaration of an agent.

The Court: How would you prove it? [114]

Mr. Carr: Well, your Honor, if you want the authorities—

(Testimony of Kenneth E. Pool)

The Court: How would you prove it? Here are two men that formed a partnership. Now, an agency cannot be proved by an agent's statement or declaration. But if a man formed a partnership or owned the property, he can state it.

Mr. Carr: He has offered to prove, as I understand the testimony, the partnership relation. You cannot prove the partnership relation by the act or declaration of someone who is supposed to act in behalf of the partnership.

The Court: One partner, then, cannot say he is a partner?

Mr. Carr: If he is on the stand, yes, he can testify. But you cannot take his act or declaration and prove that he is a partner by that act or declaration. That is exactly what counsel is trying to do.

The Court: How would you prove it? Suppose two men say, "We are partners," and make that statement to you? And you say, "Well, they have told me they are partners."

How would you prove it? There is no way to prove it.

Mr. Carr: Yes, your Honor, you can prove it. For instance, in a civil case you can call one of the partners.

The Court: That will not prove it.

Mr. Carr: In a criminal case—

The Court: Now, wait. That would not prove it because you say that the declaration of one partner is not sufficient; so if he is on the stand, that would not prove it. [115]

Mr. Carr: That is a different proposition. If he is on the stand, he can testify.

The Court: Not under your statement.

(Testimony of Kenneth E. Pool)

Mr. Carr: Of course he can.

The Court: Of course he cannot because it is assumed that—of course, it does not have the dignity of an oath—that men speak the truth.

Mr. Carr: I submit my objection is, your Honor, that you cannot offer testimony of an act or declaration of Mr. Ziegler to bind the West Coast Supply Company. That is my objection.

The Court: The objection is there is no way to prove a partner in a criminal case. It will be overruled.

Q. By Mr. Strong: Will you state the conversation on that date, just with reference to what I asked?

A. March 13, 1945?

Q. Yes. A. At that time—

Mr. Strong: May I have that stricken, your Honor? I would like to lay a clearer time foundation.

The Court: All right.

Q. By Mr. Strong: Where did this take place?

A. This took place in the same premises referred to as 1654 Long Beach Boulevard in the City of Los Angeles, the West Coast Supply Company. [116]

Q. Who was present besides you and Mr. Ziegler?

A. Just myself and Mr. Ziegler at that particular time. Sometime later on there was someone else.

Q. Just at that time.

A. Just at this time, that is right.

Q. Will you now state what was said?

A. Mr. Raymond Ziegler—you don't want any other part of the conversation here, do you? Just as to the partnership?

(Testimony of Kenneth E. Pool)

Q. Yes.

A. He stated that he was a partner, owner-partner of the West Coast Supply Company.

Q. Talking about Mr. Paul Ziegler?

A. Mr. Paul Ziegler, yes.

Q. Who stated it? A. Mr. Paul Ziegler.

Q. How did that conversation arise?

A. It occurred over the sanitary conditions in the plant.

Mr. Strong: Just a minute.

The Court: Strike that out.

Q. By Mr. Strong: Just a minute. Had you asked him or—

A. Yes, I had asked him who owned the firm. He said that it was still a partnership of Paul Ziegler, Raymond [117] Ziegler and Allan Ziegler.

Mr. Strong: That is all.

Cross Examination.

By Mr. Carr:

Q. He did not mention his father to you?

A. I beg your pardon, sir?

Q. He did not mention his father?

A. No, I don't think he did at that time.

Q. How long have you been in contact with the West Coast Supply Company in your so-called official capacity?

A. Oh, three or four years, maybe a little longer.

Q. Did you ever meet Mr. John Ziegler?

(Testimony of Kenneth E. Pool)

A. John Ziegler? No, I don't recall any John Ziegler. I know someone by that name but no connection with the West Coast.

Q. You did not know that Mr. John Ziegler was a member of the West Coast Supply Company?

Mr. Strong: I object to that, your Honor. That is a fact not in evidence.

The Court: This is cross examination. Counsel is entitled to go into all those questions.

Mr. Strong: I withdraw it.

The Court: Repeat counsel's question.

(Question read by the reporter.) [118]

The Witness: No.

Q. By Mr. Carr: How many conversations do you say you had with Mr. Paul Ziegler?

A. How many conversations have I had with him?

Q. Yes. A. On one occasion or the other?

Q. Approximately. A. Oh, five or six.

Q. Each time you talked about the partnership, did you? A. No, not on each occasion.

Q. How many times did you discuss the partnership relation? A. Three.

Q. Three different times? A. That is right.

Mr. Carr: That is all.

The Court: That is all.

Mr. Carr: May I just ask one further question? I am sorry, your Honor.



(Testimony of Kenneth E. Pool)

The Court: Just a minute, Mr. Pool. You may stand right there.

Q. By Mr. Carr: What is the registration you have, what firm name? A. West Coast Supply Company.

Q. What other registration do you have? [119]

A. In my records here?

Q. Yes. A. None.

Mr. Carr: Maybe he had better take the stand, your Honor.

The Court: All right, take the stand.

The Witness: That is all: West Coast Supply Company.

Q. By Mr. Carr: Do you list the partners there?

A. Yes.

Q. In your file? A. Yes, that is right.

Q. Who do you list as partners?

A. Paul Ziegler, J. H. Ziegler—

Q. J. H. Ziegler? A. J. H. Ziegler.

Q. That is John Ziegler, is it not?

A. I don't know.

Q. All right. Who else?

A. R. M. Ziegler, A. S. Ziegler.

Mr. Carr: That is all.

Mr. Strong: That is all.

The Court: That is all.

(Witness excused.)

ALBERT F. LELAND (Recalled)

Direct Examination (Resumed)

By Mr. Strong: [120]

Q. You are the same Mr. Leland who testified here yesterday?      A. Yes, sir.

Q. After receiving, as you testified, the order for the sugar from Mr. Paul Ziegler what did you do?

A. Phoned the sugar refinery, Union Sugar Company, and gave them instructions to deliver it.

Q. Did you have invoices made out?

A. Well, the office had invoices made out, yes, sir.

Q. Did you supply any of the information contained on the invoices?

A. No. That is all a matter of sugar record.

Q. Well, here showing you Government's Exhibit 12, did you supply your office with any of the information on that?

A. Yes. I told them to ship to West Coast Supply Company.

Q. Who had ordered the sugar to be shipped to the West Coast Supply Company? Anyone?

A. Mr. Ziegler.

Q. That is, Paul J. Ziegler?

A. Paul J. Ziegler, yes, sir.

Q. Now, then, as I recall you testified that you received a sugar ration check from Mr. Paul J. Ziegler?

A. Yes, sir.

Q. Was that in connection with this transaction or [121] another one?      A. This transaction.

(Testimony of Albert F. Leland)

Q. You stated, I believe, that Government's Exhibit 6 for identification was the check which he gave you?

A. Yes, sir.

Mr. Strong: I offer this check in evidence, your Honor, as Government's Exhibit 6.

Mr. Carr: I object on the ground that it has been altered. The testimony shows it has been altered. It is not binding on either the West Coast Supply Company or on Paul J. Ziegler; for the further reason that under the ration order, Third Revised Ration Order No. 3, it is not a check issued under paragraph (15) of section 24.1, also under paragraph (5), section 24.1, and paragraph (9) of section 24.1, all because, your Honor, first of all, it is not a ration check; it is not on an account, not drawn by a depositor on a ration account. It is wholly immaterial, collateral to all of the issues in this case.

The Court: The check reads "Ration Check—The United States of America—Office of Price Administration—Transfer to the sugar ration bank account of Union Sugar Co.—600,000 pounds of sugar."

With reference to the alteration, Mr. Carr, will you direct the court's attention to what you claim is an alteration? [122]

Mr. Carr: I direct the court's attention to the fact that the witness has testified that the name "West Coast Supply Company" did not appear there at the time he received the check. Someone after delivering the check has altered the check by adding to it "West Coast Supply Company."

(Testimony of Albert F. Leland)

The ration order specifically prevents the transfer of a check after it is altered. May I refer your Honor to section 15.7, Revised Ration Order No. 3, which reads as follows:

"No check which has been altered . . . mutilated or partially destroyed, or which contains an erasure, may be issued, transferred or deposited. A person who holds such a check . . ."

To-wit, this gentleman or his concern.

". . . shall return it to the issuer with a request for a new check. . ."

And so on down to paragraph (h). I had better read the whole paragraph.

"(h) How altered and lost checks replaced. A depositor to whom an altered . . . mutilated or partially destroyed check issued by him is returned or who receives a request for the replacement . . . may issue a new check. If he does so. . ."

Then it goes on to say what he must do to cancel it.

Now, very specifically under everyone of those definitions and regulations the check could not be passed. It was an [123] altered check. If you add a name to a check, you alter it.

Mr. Strong: May I be heard on that, your Honor?

The Court: Yes.

Mr. Strong: May I use those regulations, please, Mr. Carr?

Mr. Carr: I suppose so.

(Testimony of Albert F. Leland)

Mr. Strong: Thank you. The provisions which Mr. Carr read, in effect, make it illegal for Mailliard & Schmiedell to handle the check as they did, possibly. But the mere fact that someone else may have committed a violation does not absolve anyone else who committed a violation.

In this particular instance, your Honor, the check, as the witness testified, was given to him by this defendant as the sugar ration check covering the purchase of 600,000 pounds of sugar which these documents which are in evidence, Government's Exhibits 12, 13 and 14, indicate.

Mr. Carr: I don't believe they were in evidence. May I interrupt? Were they in evidence?

Mr. Strong: By stipulation.

Mr. Carr: I will have to assign that as error, your Honor. I did not stipulate that those documents could go in evidence. I stipulated that no foundation was required and that in the ordinary course of business they were kept as records. But I specifically objected to them on other grounds. [124]

I do not think counsel ought to mis-state that.

Mr. Strong: My impression was that your Honor admitted them in evidence and that they are so marked.

The Court: Well, that is not Mr. Carr's point. The point is to have the record show what the stipulation was and save his objection.

Mr. Strong: Yes. But I believe your Honor admitted them over the objection.

(Testimony of Albert F. Leland)

Mr. Carr: That may be true. I don't know. I did not so understand.

The Court: We will have the record show as to protect the defendant's rights.

Mr. Strong: I have no objection to that, your Honor.

Mr. Carr: If they are offered, may I be sure that that objection applies?

The Court: Yes, that objection applies to Exhibits 12, 13 and 14. They are in evidence. All right, proceed, Mr. Strong.

Mr. Strong: As I was saying, your Honor, the sugar as shown by these documents, was actually transferred to the West Coast Supply Company and received by it, so that there is not any question of that fact that this particular check, which is being questioned now, was specifically handed to this witness as the ration check to cover this transaction, this sugar transaction. [125]

I submit to your Honor that under those circumstances it does not make any difference whether the defendant Paul J. Ziegler did or did not place the name "West Coast Supply Company" upon the check, since that check, regardless of whether it had that name, was, in fact, the ration check being used by the defendant, as was testified here, to cover the particular transaction which was an order given by him for sugar to be delivered to the West Coast Supply Company and which sugar was actually so delivered.



(Testimony of Albert F. Leland)

Under those circumstances I do not think it makes any difference as to when that name "West Coast Supply Company" got there, even assuming it was not there when the defendant Paul J. Ziegler handed over the check, since the intent and purpose of that check and the substance of the entire transaction here was to obtain sugar which could be obtained only with the use of a ration check, and this was the ration check that was handed over.

If the defendant or anyone else failed to insert on that check certain material, which the law requires should be present, that does not absolve him from having used a ration check upon an account in which there was not sufficient credit to cover the check, assuming that he knew it, which I will show later.

However, the fact is that he himself is using this check for this purpose and, consequently, that check ought to be [126] admitted in evidence since that is the basis of the transaction and the basis of the action of the sugar dealer here in actually transferring the sugar.

The Court: I will withdraw my ruling on it for the present.

Mr. Carr: I want to add one objection, your Honor, I failed to add.

The Court: All right.

Mr. Carr: That is, there has been no proof whatsoever to connect or to show the authority or the knowledge of the partnership to authorize whoever it was to place that name on the check.

(Testimony of Albert F. Leland)

I object to it on that further ground.

The Court: That objection goes, then, particularly to the partnership?

Mr. Carr: Yes, your Honor.

The Court: Yes. That is a good objection as to the partnership.

Mr. Strong: In that respect, we have the testimony of the last witness who testified that this defendant said he was a partner in the partnership, and we have an authorization card which shows that he is one of the authorized signatures. I think that that check would be a good check, regardless of whether it has a partnership relation between the defendants or not and since he did an unauthorized act, since the act [127] prohibits anyone from doing that.

The Court: You have not established any of the signatures on Exhibit 2.

Mr. Strong: Oh, no, I have not established any of the signatures. But I have established, I believe, through the first witness that the account ledger sheets were sent to the West Coast Supply Company covering all the transactions being carried on pursuant to the signatures on this card and that those transactions were never complained of; that the account was credited and debited as shown. There was never any objection on the part of any of the partners or anybody to the transactions being carried out pursuant to this card.

(Testimony of Albert F. Leland)

The Court: I will withhold my ruling for the present.  
Proceed, counsel.

Q. By Mr. Strong: What did you do with the check after you got it?      A. Turned it in to the office.

Q. To whom did you give it?

A. Miss Damon, my secretary.

Q. Who?      A. Miss Damon, my secretary.

Mr. Strong: May I have that check, your Honor?  
Thank you.

Q. By Mr. Strong: That is Government's Exhibit No. 6 for identification? [128]      A. Yes, sir.

Q. That is the last you saw of it?      A. Yes, sir.

Mr. Strong: That is all.

Cross Examination.

By Mr. Carr:

Q. Mr. Leland, you have known Paul Ziegler for some time, have you not?      A. Yes, sir.

Q. Done business with him over a period of years?

A. Yes, sir.

Q. How long would you say?

A. I would say approximately three years.

Q. Did you know Mr. Ziegler when he was practicing law?      A. No, sir.

Q. Do you recall about what time it was he came down and started to be around the West Coast Supply Company?

A. I don't recall accurately. I think it was either 1942 or '43.

(Testimony of Albert F. Leland)

Q. Prior to July 1, 1946, you had had several conversations with Mr. Ziegler respecting the possibility of getting sugar, had you not? A. Yes, sir. [129]

Q. Is it not a fact, Mr. Leland, that Mr. Ziegler had told you along about, oh, the latter part of June that he rather expected the OPA to die out and not be renewed and if that happened he wanted you to be in a position to get him some sugar? A. Yes, sir.

Q. And you discussed with him on two or three occasions at least the possibility that should that event occur, should the Act not be renewed, that you could get substantial amounts of sugar for him?

A. Yes, sir, we had sugar to sell.

Q. Do you recall the Price Control Act, or the Act, terminated on June 30, 1946? A. The OPA?

Q. Yes. A. Yes.

Q. Did Mr. Ziegler call you on that day about the possibility of getting sugar?

A. I don't recall that he did that day, sir.

Q. But he did call you the first thing on July 1st, the day after the Act terminated? A. Yes, sir.

Q. And asked you how much sugar you could get?

A. Yes, sir.

Q. So ultimately it ended up that you got him 6,000 [130] bags?

A. No, sir. I read him the telegram I had received stating that—I can't remember the exact phraseology of it without seeing the wire again—stating that the sugar

(Testimony of Albert F. Leland)

rationing was still in effect as notified by the Union Sugar Company.

Q. Is it not a fact at that time that Mr. Ziegler said to you that he was not bound by what that telegram said; that it was his opinion and he believed that the OPA was out of existence?

A. Yes, I believe he did. But I said I was bound by the telegram.

Q. In other words, you felt that because of orders from your concern that you ought to get some kind of ration document? A. Yes, sir.

Q. But Mr. Ziegler took the position that there was no OPA, did he not? A. I presume that he did sir.

Q. Well, he told you that, didn't he? A. Yes.

Q. When he gave you this check it was after you and he had discussed the matter of whether or not the OPA was still in existence?

A. Well, we discussed that in the morning. [131]

Q. This transaction occurred on July 1st?

A. Yes, sir.

Q. What time of the morning would you say that was?

A. Well, I would say it was probably around between 10:00 and 11:30 sometime.

Q. Mr. Leland, do you recall Mr. Ziegler in that conversation saying to you that the telegram was inconsistent on its face because the Act was terminating, the Price Control Act was terminating, and if it was ter-

(Testimony of Albert F. Leland)

minating the OPA could not continue to exist? Do you recall his saying that?

A. I don't remember just what he said. I remember that he questioned the telegram.

Mr. Carr: That is all.

Redirect Examination.

By Mr. Strong:

Q. After he questioned the telegram you insisted that you had to have a ration check? A. Yes.

Q. And after he questioned the telegram you got an order for 600,000 pounds of sugar? A. Yes.

Q. For the West Coast Supply Company?

A. Yes.

Q. When you insisted upon a check Mr. Ziegler gave you a ration check? [132]

A. No. It wasn't any insisting. He said, "Come over and get the check in the afternoon," which I did, sir.

Q. That is the check which is Government's Exhibit 6 for identification? A. Yes.

Mr. Strong: Thank you. That is all.

(Witness excused.)

Mr. Strong: Ask Miss Damon to come in.

At this time, your Honor, while we are waiting for the witness, I have talked to Mr. Carr about certain documents which I have here. I believe Mr. Carr will not object to the competency of the documents.



Mr. Carr: I am afraid I might. I wish we could get that straight, counsel, that I am stipulating to one thing only: that is, you do not have to call the witness to show that they have been kept in the ordinary course of business.

If Mr. Strong will just state to the court that these records were obtained from the particular people, that they were kept in the ordinary course of business, I will not require any foundation. But I may want to object to them on other grounds.

Mr. Strong: I will so state, your Honor.

Mr. Carr: Very well.

The Court: You so stipulate.

Mr. Strong: I would like to have those four documents [133] marked for identification.

The Clerk: Government's Exhibit 15 for identification.

(The documents referred to were marked Government's Exhibit 15 for identification.)

Mr. Carr: Will you tell us what they are?

Mr. Strong: Yes, I will in a moment.

Mr. Carr: Just the name of them.

Mr. Strong: May I have these marked for identification? Government's Exhibit 15 for identification consisting of the following four documents:

One is a warehouse delivery advice, No. 31450, covering three hundred bags, 100 pounds each, of sugar.

The second document is a copy of the same document with a stamp upon it "delivered"—

The Court: Is that 16, or what?

Mr. Strong: Beg pardon, sir?

The Court: Would that be 16 for identification?

Mr. Strong: This is all 15. They are all four of them in one group.

The Court: Then you will have to identify them as A, B, and so forth to keep them straight.

Mr. Strong: Very well.

The Court: Mr. Cross.

The Clerk: Yes, your Honor.

(The documents referred to were marked Government's Exhibits Nos. 15-A, B, C and D for identification.) [134]

Mr. Carr: We might be able to save trouble, your Honor, in that regard by just referring to them—what are they? Delivery evidence?

Mr. Strong: These are the documents which show the shipment and delivery of sugar involved in—

Mr. Carr: I don't raise any objection on that feature. It is just entirely up to your Honor.

Mr. Strong: That is involved in Count 4, your Honor. I offer these four documents in evidence.

Mr. Carr: I will object to those on the ground—this is the first time I have made this objection—that a partnership cannot commit a crime.

Mr. Strong: Under the Second War Powers Act a partnership is specifically designated as a person, within the meaning of the word "person," who are prohibited from engaging in the acts set forth and whose act constitute crimes under that law.

If your Honor desires, I can read the section to you.

The Court: No. Overruled. Exception allowed.

Mr. Carr: I might state to the court that I have about 10 or 15 cases as to partnerships.

The Court: That was argued to me for about two hours, and you argued one case, as you will remember—

Mr. Carr: That was a corporation, your Honor.

The Court: There was a partnership involved. [135]

Mr. Carr: I don't think so. I still don't think a partnership can commit a crime.

Mr. Strong: Has your Honor ruled on Government's Exhibits 15-A through -D?

The Court: Yes.

The Clerk: 15 in evidence.

(The document referred to was marked Government's Exhibit No. 15 and introduced in evidence.)

The Clerk: The next group is Government's Exhibit 16 for identification.

Mr. Strong: I will make the same statement, your Honor, as to Government's Exhibit 16 for identification, 17 for identification, 18 for identification, 19 for identification and 20 for identification.

These are all originals and photostatic copies of documents showing the transfer of sugar, as indicated on the face of these documents, to the West Coast Supply Company. These are offered now in evidence in connection with Count 6, your Honor.

Mr. Carr: Is that 16 and 17?

Mr. Strong: 16, 17, 18, 19, and 20.

Mr. Carr: Objected to on the same ground as heretofore. On the further ground that they do not prove or help to prove any offense. Further at this time I object on the ground that no offense is charged in any count of the information. [136]

The Court: Overruled. In evidence.

The Clerk: That will be Government's Exhibits 16, 17, 18, 19 and 20 in evidence.

(The documents referred to were marked Government's Exhibits Nos. 16, 17, 18, 19 and 20 and introduced in evidence.)

Mr. Strong: Then, your Honor, I have two documents showing the transfer of sugar to the West Coast Supply Company in the amount of 800,000 pounds.

I make the same statement as to those documents. These are being offered now in support of Count 8, your Honor.

Mr. Carr: The same objection as I have heretofore stated on all grounds, your Honor.

The Court: It is so understood. Overruled.

The Clerk: Government's Exhibit 21 in evidence.

(The documents referred to were marked Government's Exhibit No. 21 and introduced in evidence.)

Mr. Strong: That is 80,000 pounds, your Honor, not 800,000 pounds.

The Court: Has this witness been sworn, Mr. Cross?

The Clerk: No, your Honor.

DOROTHY ANITA DAMON,

a witness called by the Government, being first duly sworn, was examined and testified as follows: [137]

The Clerk: Your full name?

The Witness: Dorothy Anita Damon.

The Clerk: Your last name is spelled how?

The Witness: D-a-m-o-n.

Mr. Strong: I think, your Honor, it may save time if I simply withdraw this witness and dispense with her testimony. I have no use for her in view of these documents here.

The Court: I think you had better identify the witness while she is here.

Mr. Strong: Yes.

Direct Examination.

By Mr. Strong:

Q. What is your occupation?

A. I am a secretary. I work for Mailliard & Schmiedell. I am Mr. Leland's secretary.

Q. Is that the gentleman who was here as a witness?

A. Yes.

Mr. Strong: I shall ask her one or two other questions.

The Court: What is the name of the firm?

The Witness: Mailliard & Schmiedell.

Q. By Mr. Strong: I show you Government's Exhibit 12 in evidence and ask you if you ever saw these documents before?

A. They are my invoices on sugar we delivered to West Coast Supply. [138]

(Testimony of Dorothy Anita Damon)

Q. You mean you prepared those physically?

A. Not the invoice itself. I wrote up the bills and figured them, and they were turned over to the biller and she typed them.

Q. I see. A. I got them in the mail.

Q. You were the one who got the information from Mr. Leland? A. Yes.

Mr. Strong: That is all.

Mr. Carr: That is all.

The Court: That is all, thank you.

(Witness excused.)

Mr. Strong: Your Honor, if I may have 10 minutes, I may dispose of a large number of witnesses, both for the sake of the court and the jury and for the sake of the witnesses.

The Court: Ladies and gentlemen of the jury, we will take the morning recess.

You will remember the admonition I have heretofore given you. You are not to discuss the matter among yourselves or to permit anyone to discuss it in your presence. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court.

(Brief recess.) [139]

The Court: Stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Strong: So stipulate.

Mr. Carr: So stipulate.

The Court: Proceed.

Mr. Strong: Mr. Barry.



JAMES R. BARRY,

called as a witness by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: James R. Barry, B-a-r-r-y.

Direct Examination.

By Mr. Strong:

Q. What is your occupation, Mr. Barry?

A. A food broker.

Q. Are you a sugar broker, too?

A. Yes, sugar along with allied lines.

Q. Do you work for anybody?

A. Yes, I work for Parrott & Company.

Q. What is your occupation there?

A. Co-manager of the Los Angeles office. [140]

Q. Have you held that job during the year 1946?

A. Yes.

Q. And July, 1946? A. Yes.

Q. Do you know the defendant, Paul J. Ziegler, in this case? A. I do.

Q. Have you sold any sugar to Mr. Ziegler during 1946? A. I have.

Q. Directing your attention specifically to July 1, 1946, will you state whether you had any contact with Paul J. Ziegler with reference to any sugar on that date?

A. On or around that date I did.

Q. Did Mr. Ziegler make any purchase of sugar or place any orders for sugar with you on or about July 1, 1946? A. He did.

Q. Was that face to face or how?

A. We have a lot of orders placed with us, and I would think that possibly—

(Testimony of James R. Barry)

The Court: No, no. Just listen to the question. Laymen seldom understand the procedure in court. We can only have just what the witness knows of his own knowledge and not what he thinks or what he supposes.

Repeat the question now, please.

(Question read by the reporter.) [141]

Q. By Mr. Strong: Give us your best recollection.

A. By telephone.

Q. Have you had occasion to speak with Paul J. Ziegler over the telephone prior to this time?

A. I have.

Q. Are you familiar with Paul J. Ziegler's voice?

Mr. Carr: We won't raise any question about the identification of voice.

The Court: That will be understood. Proceed, counsel.

Q. By Mr. Strong: Will you state whether Mr. Ziegler ordered any sugar on that date?

A. He did.

Q. Approximately how much?

A. To the best of my recollection, there was two orders. One was some 600 bags and another was some 6,000 bags.

Q. 6,000 bags? A. Yes.

Q. How many pounds is that that was ordered on that date?

A. I have a hard time—a bag is a hundred pounds. So that would be 600,000 pounds.

Q. Altogether it was how many pounds?

A. Well, that would be 660,000 pounds.

Q. Will you state what he said to you, as far as you can remember, in placing the order? [142]

(Testimony of James R. Barry)

A. He gave us an order for sugar to ship 600 bags by truck, the rest by car.

Q. Did you place any orders with any sugar companies for that sugar? A. Yes.

Q. Did you make any records of the transaction?

A. Our office did.

Q. Who would that be?

A. That would be my secretary: Miss Barry.

Q. You gave her the information as to what Mr. Ziegler told you?

A. I am stating from memory only.

Q. Yes. That is what we want. A. Yes.

Q. I show you Government's Exhibit No. 4 for identification and ask you whether you ever saw this document before? A. Yes, I have.

Q. When was that?

A. July 1st or July 2nd of '46.

Q. Where did you see it? A. In my office.

Q. How did you get it? A. By mail.

Q. Was that document used by you in connection with the purchase of sugar by Mr. Ziegler? [143]

A. That document is, in a sense, the final confirmation of the order.

Q. That is a ration check covering the sugar?

A. That is a ration check covering the purchase of the sugar.

Q. The purchase on the previous day or the same day?

A. The same or previous day.

Q. In other words, that is the check, ration check, covering the 660,000 pounds of which you have just spoken? A. Correct.

(Testimony of James R. Barry)

Q. Would you look at that document and state whether the document, as received by you, appears the same as it is now on the face of it? A. Yes.

Q. So far as you know, the sugar was shipped out as per your order? A. Yes.

Mr. Strong: That is all.

Cross Examination

By Mr. Carr:

Q. Mr. Barry, you were out of the city on July 1st, weren't you? A. I can't answer that question.

Q. Do you have any records or any way of finding out [144] whether you were out of the city on that day?

A. I possibly could investigate it, yes.

Q. To refresh your recollection, were you not out of town on July 1st and the following day, July 2nd? Your secretary told you that she had attended to this order.

A. That is possible. I would have to check my records.

Q. As a matter of fact, you did not pick up that check at all, did you?

A. What do you mean by "pick up"?

Q. Go over—

The Court: No. He said it came through the mail.

The Witness: It came through the mail, I believe.

Q. By Mr. Carr: Did you open the letter yourself?

A. I very seldom do; so I possibly did not.

Q. I will ask you if you did not call Mr. Ziegler on July the 2nd or maybe the day after and say in effect, "Paul, I notice this check has only 'Paul J. Ziegler' on it. It doesn't have 'West Coast Supply Company' on it."

(Testimony of James R. Barry)

Do you remember that conversation?

A. I don't remember it, but it could have been true.

Q. Well, have you any way of refreshing your recollection?      A. No.

Q. Now, take another look at this check. Is it not a fact that the name "West Coast Supply Co." was not on the check when you first saw it? [145]

A. That is something I can't answer.

Q. Do you remember whether it was or it wasn't on there?      A. I do not remember.

Q. Do you still have the same typewriters in your office that you had on July the 2nd?

A. I imagine we do, yes. I am sure we do.

Q. Do you know?      A. We do.

Q. Are those typewriters available now so if we wanted to make a sample we could get a sample of those typewriters?      A. They are available.

Q. Do you have a diary? Do you keep a diary?

A. No, I do not.

Q. Do you remember having a conversation with Mr. Ziegler on the telephone on July the 2nd?

A. I remember several conversations with Mr. Ziegler. As far as the date is concerned—

Q. Do you remember talking about the check?

A. It is possible.

Q. Well, I am just asking you.

A. I do not remember.

Q. Mr. Ziegler talked to you sometime in June about getting sugar, did he not; discussed with you the possibility that the OPA might not be renewed and he wanted to look around and pick up some sugar for his manufacturing business?

(Testimony of James R. Barry)

A. It is perfectly possible. I can't answer a direct [146] question as to a month. That is our business, the sugar business. They are talking to us every day about that possibility. All our customers are.

Q. Well, you do remember that you had several conversations with Mr. Ziegler? You remember that?

A. I have had many conversations with Mr. Ziegler.

Q. You do recall, I think, that on July the 1st you talked to him on the telephone about the sale of this sugar?

A. You have shaken my confidence in my memory. You say I wasn't in Los Angeles; so I can't answer that question.

Q. I did not say that, Mr. Witness. I merely asked you.

I am not allowed, the court will tell you, to argue with the witness. But what I want to get is your best recollection, and whatever means you have of establishing that recollection I would like to have you do it.

Can you go back to your office and get out your order slips or any documents and refresh your recollection?

A. No.

Q. Are you sure that you looked at this check?

A. I don't like to—

The Court: Exhibit what, Mr. Carr?

Mr. Carr: This is Exhibit 4.

The Witness: Mr. Carr, could I explain the method of operation in our office? Maybe that—

Mr. Carr: Certainly. [147]

The Witness: Then I can possibly—I don't like to answer with reservations or anything like that. But on the handling of the Holly sugar account in our office, or—



(Testimony of James R. Barry)

ders as a general rule come in on the telephone or through the mail; and as a general rule those orders are placed with myself or with my sister who is also my secretary.

Now; as far as the conversation that might have occurred on a certain date with a certain customer, my recollection would not be positive as to whether the conversation was with my secretary and transmitted to me or whether it was with me directly. And that is why I am not able to answer on such a day whether I personally spoke to Mr. Ziegler. I could say that our office records show that someone in our office talked to him.

Q. Take another look at Exhibit 4 and tell me if you recall whether you ever saw that check or not?

A. To the best of my knowledge, I have seen this check before.

The Court: Does the date on the check help you any? Is there a date?

The Witness: Yes, there is a date, your Honor: July 1st, '46.

Q. By Mr. Carr: Mr. Barry, in an attempt to refresh your recollection, do you not recall that on July 2nd or 3rd—you don't have to be specific; I realize the memory might [148] slip on that—but about that time that you called up Mr. Ziegler because the name "West Coast Supply Co." did not appear on that check and discussed with him why he had not put "West Coast Supply Co." on the check?

A. Without answering your question, first at times we receive checks in our office without having properly the names in.

The Court: Listen to Mr. Carr's question now.

The Witness: All right.

(Testimony of James R. Barry)

The Court: And then take your time. There is no hurry. Get it as accurately as you can.

Read the question.

(Question read by the reporter.)

The Witness: Yes.

Mr. Carr: That is all.

### Redirect Examination

By Mr. Strong:

Q. Will you give us the substance of that discussion?

A. I questioned Mr. Ziegler why the check did not have "West Coast Supply Co.," and to the best of my recollection he said, "Well, is that necessary?" Or, "That is not necessary." And I said, "Well, we will send the check back to be properly filled out or we will insert the firm name on the check," as is our practice when firms fail to type in their [149] name on their ration evidence.

To the best of my knowledge, we did not send this check back to West Coast Supply to be filled in but that Mr. Paul Ziegler authorized us by—

The Court: Strike out the word "authorize." Just state what he said.

The Witness: All right. Paul Ziegler said, "All right, put in 'West Coast Supply Co.'"

Mr. Strong: That is all.

### Recross Examination

By Mr. Carr:

Q. Well, now, let us go back and refresh your recollection.

It is beginning to come back to you now, Mr. Barry, that transaction?      A. Yes.

(Testimony of James R. Barry)

Q. You say Mr. Ziegler said to you to put "West Coast Supply Co." on that check?

A. He said in substance to put it in. Now, by "substance" I mean he probably said, "If you insist, if you won't ship the sugar unless you do."

Q. Well, now, let me refresh your recollection if this isn't what he said to you: "You do as you like about it. As far as I am concerned, there is no OPA in existence. The [150] Act has run out." And he called you by your first name, I believe, Jim, or whatever it is?

A. That is generally the case.

Q. "That is up to you. Do whatever you want to do about it"? A. No, I do not recall that.

Q. You don't recall specifically what he did say to you? A. I recall that he authorized—

The Court: No. In the law that is a conclusion.

The Witness: Sorry, your Honor.

The Court: You do not have to give the exact words at any time. It is nearly impossible for any person to do that in a conversation. Just give the substance—think it over carefully—the best you can with reference to the conversation. All right.

The Witness: He said, "If you won't accept the check without West Coast Supply Company's name on the check, put it on."

Q. By Mr. Carr: You made no contact with any member of West Coast Supply Company to determine whether or not he had that authority, did you, or that ability to tell you to do that?

A. Your question is not clear, Mr. Carr.

The Court: Repeat the question. [151]

(Testimony of James R. Barry)

Mr. Carr: If it is not, I will strike it and ask it again.

The Court: All right.

Q. By Mr. Carr: Did you call up anyone at the West Coast Supply Company to determine whether or not you should put that name on: "West Coast Supply Co."?

A. No, I did not.

Q. Who put it on there?

A. I imagine my secretary.

Q. But the name "West Coast Supply Co." was put in by your typewriter by someone in your organization?

A. To the best of my recollection, because I do not recall sending the check back to the West Coast Supply Company.

Q. Well, at the time that you talked to Mr. Ziegler, part of that sugar had already been shipped, had it not?

A. I would have to look at the records.

Q. Do you have them available?

A. They are in the possession of my secretary who follows me on the stand.

Mr. Carr: May I ask, your Honor, that he get those records?

The Court: Yes, that is a proper request.

The Witness: Do I go get them?

Mr. Carr: Yes, if you will, please.

(Brief pause in the proceedings.) [152]

Q. By Mr. Carr: Can you tell from those records, whatever records you may have, to refresh your recollection from anything, if it is a fact that some of that sugar was shipped prior to the time that whoever it was in your organization put the West Coast Supply Company name on that check?

(Testimony of James R. Barry)

Mr. Strong: I submit, your Honor, that that is wholly immaterial.

The Court: I shall permit it. It is cross examination. He is entitled to wide latitude.

Mr. Strong: All right. I withdraw it.

Q. By Mr. Carr: Do you understand my question?

A. Would you repeat it, please?

The Court: Mr. Reporter, read the question.

(Question read by the reporter.)

Q. By Mr. Carr: Is that not clear, Mr. Witness?

A. That is clear.

The Court: That is clear?

The Witness: From my records there was no sugar delivered to West Coast Supply Company until their name was on the check.

Q. By Mr. Carr: Was it shipped?

A. Our records aren't clear enough to answer that. The only person—

Q. Will your secretary know that, do you think?

A. Not from our records, no. [153]

Q. Then you have no way of establishing whether or not it was shipped, some of it, prior to that date?

A. I have no way of establishing what day it might have been shipped.

Q. Did your secretary handle generally the ration checks that came to your organization?

A. That is the common practice.

Q. What approved the acceptance of the ration checks, in other words, to consummate the transaction? Did you or your secretary?

A. That is not clear. By "approval" what do you mean?

(Testimony of James R. Barry)

Q. Ordinarily before you would deliver sugar you would ask for a ration check, would you not?

A. Correct.

Q. Now, you delivered sugar sometimes and got the ration check later, did you not?

A. Not to my knowledge.

Q. You never did that?                      A. No, sir.

Q. So that you waited until you actually got physical possession of the ration check before you wrote out any order for shipment of sugar?

A. That is our policy.

Q. Is that what you did?

A. To the best of my recollection, yes. [154]

Q. At the time this check arrived you noticed that it didn't have "West Coast Supply Co." on it?

A. Either I did or someone in our office did.

Q. So either you or—I believe you remember now that you did call up Mr. Ziegler?

A. To the best of my memory, I did talk to Paul on that.

Q. You did that because you knew that on the check you had to have a depositor under the Ration Order; you would have to have a depositor on that check, did you not; signed by a depositor?

A. We sell sugar only to authorized firms, if that is what you mean.

Q. I mean simply this: that when you got a ration check if there was not an authorized depositor and an account somewhere, you would not take the check, would you?                      A. We would not.



(Testimony of James R. Barry)

Q. So you merely put this name "West Coast Supply Co." in to protect yourself, did you not?

A. No, sir.

Mr. Carr: That is all.

Redirect Examination.

By Mr. Strong:

Q. Do you have the sugar here in Los Angeles for ship- [155] ment?

A. No. I believe all of this sugar—we have sugar in Los Angeles, but most of it comes from the factory at Dyer, California, which is the same as Santa Ana.

Q. Where did this come from?

A. Santa Ana, all from the Dyer factory of the Holly Sugar Corporation.

Q. So that you don't actually yourself ship any sugar here, do you?

A. Our firm does not ship sugar.

Q. You are brokers? A. We are brokers, yes.

Q. Now, in answer to a question by Mr. Carr as to whether you spoke to anybody else at the West Coast Supply Company to find out whether you were authorized to insert that name "West Coast Supply Co.," you said you did not?

A. To the best of my knowledge, I did not.

Q. Why not?

A. It was not at all necessary from my viewpoint.

Mr. Carr: Well, now, I move to strike that answer.

The Court: Yes. "Not necessary" is a conclusion.

Q. By Mr. Strong: Had you been dealing with Paul Ziegler before? A. Yes, for sometime.

Q. Had he been buying sugar from you before? [156]

A. Yes.

(Testimony of James R. Barry)

Q. For whose account had he been buying sugar?

A. The West Coast Supply Company.

Q. Did you ever have any complaint from the West Coast Supply Company as to selling sugar to Paul?

A. No, sir.

Mr. Strong: That is all.

Recross Examination.

By Mr. Carr:

Q. I would like to ask another question now.

You knew that the John H. Ziegler Company was also operating at that same location, did you not?

A. Your Honor, may I ask a question?

The Court: Yes, go ahead.

The Witness: Anything that the attorney asks me about is as far as my knowledge refers back to my knowledge as of the date under consideration: July 1, 1946?

The Court: No, no.

The Witness: Or my knowledge?

The Court: No, counsel has not limited his question. He just asked you a general question.

Repeat the question, please.

(Question read by the reporter.)

Mr. Strong: I object to that unless a date is fixed as [157] to when he knew this.

The Court: I shall permit the question.

Mr. Carr: July 1, 1946.

The Witness: I do not know.

Q. By Mr. Carr: When did you know?

A. Possibly November, October of 1946.

Q. Who paid you for the sugar?

A. We do not receive payment for the sugar.

(Testimony of James R. Barry)

Q. You got a receipt there, a copy of a receipt that you signed for the checks for the sugar, I mean money checks?

A. The only checks we received were from the Union Bank and Trust Company, cashier's checks. We received them on behalf of the Holly Sugar Corporation who the money was due as their agents.

Q. Your records will certainly show who paid for the sugar, will they not?

A. On the invoices where we collected the money on behalf of the Holly Sugar Corporation, they were paid by cashier checks.

Q. Did you not receive two checks from the John H. Ziegler Company?      A. No, sir.

Q. You are sure of that?

A. Mr. Carr, we do not receive checks from any people we sell sugar to. The Holly Sugar Corporation receives pay- [158] ment for their sugar. We are their agents and sell the sugar.

Q. Don't the checks go through you, Mr. Barry?

A. In general practice, no.

Q. Did not these checks to pay for the sugar go through you?

A. A part of the sugar. Two checks went through our office.

Q. Those were from the John H. Ziegler Company, were they not?

A. To the best of my knowledge of our records, they came from cashier check No. 493719 of the Union Bank and Trust Company.

(Testimony of James R. Barry)

Q. You have identified that check. Identify the other two, if you will.      A. Well, that is one of two.

Q. Yes.

A. There is only one other that I can identify. It is cashier's check No. 493858 of the Union Bank and Trust Company.

Mr. Carr: Very well. That is all.

### Redirect Examination

By Mr. Strong:

Q. You did not receive those checks personally, did you? You are just testifying from the records? [159]

A. To the best of my knowledge, those checks, one or both, were brought into our office; and if I did not receive them personally, I believe that I saw them.

Q. Now, just one more question. You say that in November you found out about a John H. Ziegler Company?      A. Approximately.

Q. Who told you about it?

A. I believe Al Ziegler.

Q. Al Ziegler?      A. Either Al or Ray.

Q. What did he tell you?

Mr. Carr: Well, now, just a moment. I object to any conversation as to what occurred.

The Court: Oh, no. You opened it up, Mr. Carr.

Mr. Carr: All right, your Honor. I object to it.

The Court: Yes. When you bring up a subject, they are entitled to—

(Testimony of James R. Barry)

Mr. Carr: There is a limitation, your Honor, on the subject.

The Court: What?

Mr. Carr: Very well, sir. I have made my objection.

The Court: Go ahead.

The Witness: Well, I believe the matter came up when it became public knowledge that this court action might take place, and at that time I was at West Coast Supply and I [160] believe either Ray or Al Ziegler in ordinary conversation said, "Well, Paul is with John H. Ziegler Company."

Mr. Strong: That is all.

The Witness: And to the best of my knowledge, that is the first time I heard of John H. Ziegler Company.

Mr. Strong: That is all.

Recross Examination.

By Mr. Carr:

Q. You learned then that there were two partnerships operating at 1654 Long Beach Avenue?

A. Mr. Carr, there was no detail. It was an ordinary conversation. I do not know that today.

Q. And Allan Ziegler told you that Paul was not even a partner of the West Coast Supply Company, did he not?

A. To the best of my knowledge, he did not go that far, no.

Mr. Carr: That is all.

(Testimony of James R. Barry)

Redirect Examination.

By Mr. Strong:

Q. All the sugar purchases that you had had heretofore were for that company?

A. West Coast Supply Company.

Mr. Strong: That is all. [161]

The Court: That is all, thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Strong: Mr. Moseley.

I would like to offer at this time Government's Exhibit 4 for identification in evidence, your Honor. That is the check that the witness just testified about for six hundred sixty- —

Mr. Carr: I want to object to it on all grounds that I have heretofore set forth. In addition to the other grounds I want to add that a partnership cannot be guilty of a criminal offense and furthermore that there has been an alteration of the check; that it is not a ration document within those various sections that I have heretofore pointed out to your Honor and has not been shown to be any authority whatsoever for the signature or name "West Coast Supply Co." to be on the check.

The Court: In evidence.

The Clerk: Government's Exhibit No. 4 in evidence.

(The document referred to was marked Government's Exhibit No. 4 and introduced in evidence.)



[GOVERNMENT'S EXHIBIT NO. 4]

CHECK NO. 146 DATE 7/1 1946

TRANSFER TO THE  
**SUGAR**

RATION BANK ACCOUNT OF Holly Sugar Co.  
(NAME OF BENEF.)

One Hundred Fifty Thousand  
(AMOUNT IN WORDS)

TO THE  
**UNION BANK & TRUST CO.**  
OF LOS ANGELES  
COMMERCIAL TRUST  
SAVINGS  
FR-121 LOS ANGELES, CAL. 16-77

AMOUNT IN FIGURES  
660,000  
POUNDS OF  
**SUGAR**

West Coast Supply Co.  
(PRINT OR TYPE NAME OF YOUR ACCOUNT)  
Charles J. [Signature]  
(AUTHORIZED SIGNATURE)

FED. DEPT.  
FIRST NATIONAL BANK  
Colorado Springs, Colorado  
HOLLY SUGAR CORPORATION  
Colorado Springs, Colorado

No. 191064  
7/4/47  
147  
11555  
10.00  
LOCAL EXCHANGE

THE  
SUGAR  
CO.

4000  
JAN 20  
THE  
CAL. SUG. CO.

(Brief pause in the proceedings.)

Mr. Strong: Miss Barry. [162]

CATHERINE BARRY,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Catherine Barry.

The Clerk: How do you spell "Catherine"?

The Witness: C-a-t-h-e-r-i-n-e.

The Clerk: Will you take the stand, please?

Direct Examination.

By Mr. Strong:

Q. What is your occupation, Miss Barry?

A. Stenographer.

Q. Whom do you work for?

A. Parrott & Company.

Q. Are you related to Mr. Barry?

A. I am his sister.

Q. Are you his stenographer? A. Yes.

Q. Now, did you bring certain records which I asked for? A. Yes.

Q. May I see them, please?

A. Surely. (Producing documents.)

Mr. Strong: Thank you. May I have this marked for [163] identification, if your Honor please?

The Court: Very well.

The Clerk: That will be Government's Exhibit 22 for identification.

(The documents referred to were marked Government's Exhibit No. 22 for identification.)

(Testimony of Catherine Barry)

Mr. Strong: May I have these four documents marked as Government's Exhibit for identification, your Honor?

The Court: They may be marked.

The Clerk: Government's Exhibit 23 for identification.

(The documents referred to were marked Government's Exhibit No. 23 for identification.)

Q. By Mr. Strong: Miss Barry, you are acquainted with the order—

The Court: Will you just state the subject of Exhibit 22 so I can have a note of it?

Mr. Strong: Yes, your Honor. Government's Exhibit 22 is a handwritten sheet showing various entries, names of concerns and details of transactions.

The Court: All right.

Mr. Strong: Government's Exhibit 23 consists of four separate invoices, rather, copies. They are labeled "Broker's copy of invoice—Holly Sugar Corporation."

Q. By Mr. Strong: Are you familiar with the transaction in which the West Coast Supply Company purchased sugar [164] on or about July 1, 1946, through your brokerage firm? A. Yes.

Q. I show you Government's Exhibit No. 22 for identification and ask you what this is with reference to that transaction.

A. Well, this is a record of shipments of sugar. We call it a "Daily Sheet" in the office. It shows a shipment of 600 bags, 300 on July 1st and 300 on July 2nd and a shipment of 6,000 bags that were shipped in rail cars.

(Testimony of Catherine Barry)

Q. Shipment to whom?

A. To West Coast Supply Company.

Q. By the way, is that your handwriting?

A. Yes, it is.

Q. You made out that entire sheet?

A. Yes. Well, let me see.

Q. At least that is as to West Coast Supply Company?

A. As to West Coast, yes.

Q. Does it show the ration check covering that transaction?  
A. Yes, 146.

Q. I show you Government's Exhibit 23 for identification and ask you what this is.

Mr. Carr: Mr. Strong, you did not show me those documents.

Mr. Strong: I am sorry. That was absolutely unintentional. [165] al. May I show them to you?

(Brief pause in the proceedings.)

Mr. Carr: All right, thank you.

Q. By Mr. Strong: I believe I asked you to state if you know what Government's Exhibit 23 for identification is.  
A. They are copies of invoices.

Q. Invoices covering any particular transaction?

A. Covering the two transactions I spoke of: the 600 bags and 6,000—

Q. That totals how much sugar?

A. 6,600 bags.

Q. How much is each bag? A. 100 pounds.

Q. So far as you know, that sugar was ordered by you from the Holly Sugar Corporation for delivery to West Coast Supply Company?  
A. Yes.

Mr. Strong: May I offer these in evidence, your Honor, as Government's Exhibit 23?

(Testimony of Catherine Barry)

The Court: In evidence.

The Clerk: Government's Exhibit 23 into evidence.

(The documents referred to were marked Government's Exhibit No. 23 and introduced in evidence.)

Mr. Strong: And Government's Exhibit 22, insofar as it applies to the West Coast Supply Company? [166]

The Court: In evidence.

Mr. Carr: I would like to reserve that objection, if I may, your Honor, that so far as the West Coast Supply Company is concerned it is not binding on them in a criminal case.

The Court: It is so understood.

The Clerk: Government's Exhibit 22 in evidence.

(The documents referred to were marked as Government's Exhibit No. 22 and introduced in evidence.)

Mr. Strong: That is all.

Cross Examination.

By Mr. Carr:

Q. I show you Government's Exhibit No. 4 in evidence and ask you: Are you the one that put in "West Coast Supply Co." there, typed it in?

A. Typed it in?

Q. Yes.

A. Well, it is a long time to remember back to say whether I did or did not. I have added the firm name to checks when they have been missing. I could have done it to this. I think I probably did. If I did, I asked the firm or at least somebody I thought was the firm whether I could add "West Coast Supply Co."



(Testimony of Catherine Barry)

Q. I believe you testified, too, that there were two [167] shipments on July 1st. Do you want that record to refer to? I am showing you Government's Exhibit 22 in evidence.

I did not quite hear you plainly. As I understood, you said there were some shipments on July 1st?

A. On July 1st there were 300 bags that moved by truck, and on July 2nd 300 by truck; and the rail cars were shipped—

Q. Later on sometime?

A. The 3rd and the 5th.

Q. The shipment of sugar took place before you received the check, did it not? A. No.

Q. Did you get the check on July 1st?

A. Oh, I presume so.

Q. Well, did you not receive it in the mail on July 2nd?

A. I don't know whether it came in in the mail or whether it was brought into the office. They come in both ways. I can't remember whether they come in by mail or—

Q. Well, it is your practice sometimes to ship the sugar before you get the ration check, is it not?

A. Sometimes.

Mr. Carr: That is all. [168]

Redirect Examination.

By Mr. Strong:

Q. Now, on that Government Exhibit 22 the details of the order, as I understand it, that is what we are discussing here.

I see that there is on here the letters "CH" and then there is a number sign and "146": "CH #146."



(Testimony of Catherine Barry)

Can you say what that is?      A. Check 146.

Q. Where did you get that information?

A. That is the procedure I follow when I have sent the check in a day or so earlier with the first invoice. You have to have the ration credit attached to the first invoice. I have filed "Holly," meaning that that check has already gone in to Holly Sugar Corporation and they carry the ration credit for further shipments of sugar until the check is used up.

Mr. Strong: Thank you very much. That is all.

Recross Examination.

By Mr. Carr:

Q. Did I understand you to say—what was that date again, please, that shows the receipt of the check or when you delivered it?

A. We delivered on the 1st.

Q. No, I mean the ration check. [169]

A. It was attached to the invoice covering the delivery of the first.

Q. So that you sent the check over to your principal on July 1st?

A. No, I wouldn't have invoiced until possibly July 2nd or July 3rd. You have to wait for the papers to come through until you pick up the invoice.

Q. Well, the point I am trying to get at is simply this: that you cannot tell from that document when you received the ration check, can you?

A. No, I cannot.

Mr. Carr: I think that is all. Just one moment.

(Brief pause in the proceedings.)

(Testimony of Catherine Barry)

Q. By Mr. Carr: Miss Barry, you attended to the transactions on July 1st between you and Mr. Ziegler in connection with this sugar, did you not?

A. I was in the office.

Q. Do you remember Mr. Barry was out of the city on that date?

A. No, I don't remember that he was.

Q. Do you recall that you attended to the details of the transaction yourself because Mr. Barry was out of the city?

A. I could have. I don't remember in this particular transaction. I do that. That is my customary procedure.

Q. Had you talked to Mr. Ziegler previous to this time, previous to, say, July 2nd? [170]

A. Had I ever talked to him?

Q. Yes.

A. Over the telephone lots of times.

Q. He had discussed with you, had he not, prior to July 1st and, I would say, approximately along in June, the possibility of obtaining sugar if the OPA was not continued?

A. I don't understand quite what you mean.

Q. Do you remember that the renewal of the Price Administration Act was up in Congress at that time?

A. Yes.

Q. And was under consideration? A. Yes.

Q. And it terminated on June 29th? A. Yes.

Q. Now, what I am asking you, if you don't recollect that Mr. Ziegler had talked to you on occasions about the possibility of obtaining sugar if that Act was not renewed?

A. I could have. I mean many of the customers wondered whether they would obtain sugar.

(Testimony of Catherine Barry)

Mr. Carr: That is all.

The Witness: I mean I don't remember particularly Mr. Ziegler's case.

Mr. Carr: That is all.

Mr. Strong: Just one question, if I may, your Honor, which I forgot to ask on direct. [171]

The Court: All right.

Redirect Examination.

By Mr. Strong:

Q. Did you ever discuss with Mr. Paul Ziegler what his capacity was in the West Coast Supply Company?

A. No.

Mr. Strong: That is all.

The Court: That is all, thank you.

(Witness excused.)

Mr. Strong: May I suggest a recess at this time, your Honor?

The Court: Do you have a short witness or not?

Mr. Strong: No, it is not a short one. He will probably take about 20 minutes.

The Court: Ladies and gentlemen, remember the admonition I have heretofore given you not to discuss this matter among yourselves nor permit anyone to discuss it in your presence. You will not form or express any opinion concerning the merits of this controversy until it is finally submitted to you under the instructions of the court.

We will take a recess until 2:00 o'clock.

(Whereupon, at 11:50 o'clock a. m. a recess was taken until 2:00 o'clock p. m. of the same day.) [172]

Los Angeles, California, Wednesday, February 5, 1947,  
2:00 P. M.

The Court: Mr. Cross, call the case.

The Clerk: Yes, your Honor. 19,106 Criminal,  
United States against West Coast Supply Company and  
also Paul J. Ziegler for further jury trial.

Mr. Strong: Ready for the Government.

Mr. Carr: Ready for the defendants.

The Court: Stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Carr: So stipulated.

Mr. Strong: So stipulated.

The Court: You may proceed.

Mr. Strong: Mr. Moseley.

CARL F. MOSELEY,

a witness called by the Government, being first duly  
sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Carl F. Moseley.

The Clerk: C-a-r-l?

The Witness: Yes.

The Clerk: Will you take the stand, please? [173]

The Witness: M-o-s-e-l-e-y.

Direct Examination.

By Mr. Strong:

Q. Mr. Moseley, what is your occupation?

A. I am a salesman for the Kelley-Clarke Company.

(Testimony of Carl F. Moseley)

Q. Were you at any time during 1946 employed by the Sims-Thompson Company of Los Angeles?

A. Yes.

Q. When were you so employed?

A. All during the year until September the 15th.

The Court: What company was that?

The Witness: Sims-Thompson.

Q. By Mr. Strong: What was your capacity there?

A. Sales.

Q. What did you sell? A. Sugar.

Q. Is that a brokerage firm? A. Yes.

Q. Did you on or about July 1, 1946, have occasion to talk to the defendant Paul Ziegler?

A. On what day?

Q. About July 1, 1946. A. Yes.

Q. Did you talk to him face to face or over the phone?  
[174] A. Over the phone.

Q. Had you talked to Mr. Ziegler before over the phone?

Mr. Carr: We will stipulate that he knows Mr. Ziegler's voice.

Mr. Strong: All right.

Q. Did you at that time receive an order for sugar from Mr. Ziegler? A. Yes.

Q. Approximately how many pounds was ordered?

A. 80,000 pounds.

Q. Was that ordered in the name of a company?

A. Yes.

Q. What company? A. West Coast Supply.

Q. What did you do with the order when you got it?

(Testimony of Carl F. Moseley)

A. I turned it over to the order department.

Q. That is at Sims-Thompson Company?

A. Yes, sir.

Q. Did you have any discussion with Mr. Ziegler about a ration check?      A. No.

Q. Did you ever receive any ration check from Mr. Ziegler?

A. Well, at the time he placed the order he gave us a ration check number. [175]

Q. Do you remember what the number is?

A. No.

Q. Did you have any further conversation regarding that check?      A. None at all.

Q. Have you ever seen the check itself?

A. Yes.

Q. I show you Government's exhibit 3 for identification and ask you if you ever saw this document before?

A. Yes.

Q. Where did you see it?

A. I saw it yesterday morning.

Q. Did you ever see it before then?      A. No.

Q. Did you say that you received the check from Mr. Ziegler?      A. No.

Q. Oh, I misunderstood you. I am sorry. You do not know whether a check arrived or not?

A. No. I would say—

Mr. Carr: Now, if he says no, if your Honor please—

The Court: All right.

Mr. Strong: That is all.

Mr. Carr: That is all.

The Court: That is all, thank you.

(Witness excused.) [176]



Mr. Strong: Mr. Neff.

The Court: Do you have any instructions to be filed, Mr. Strong?

Mr. Strong: I have them, your Honor.

(Documents handed to the court.)

Mr. Strong: May the record show that I have given a copy of the instructions to Mr. Carr?

The Court: And filed a copy with the court.

PAUL H. NEFF,

a witness called by the Government, having been duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Paul H. Neff.

The Clerk: N-e-f-f?

The Witness: Yes.

The Clerk: Take the stand, please.

Direct Examination.

By Mr. Strong:

Q. What is your occupation, Mr. Neff?

A. Office manager.

Q. Of what?

A. For the Sims-Thompson Company.

Q. How long have you been office manager? [177]

A. Since October, 1944.

Q. Nineteen what? A. 44.

Q. Would you speak up a little louder?

A. Since October, 1944.

Q. Did you bring any documents which I subpoenaed from the files of the Sims-Thompson Company?

A. Yes, I did.

(Testimony of Paul H. Neff)

Q. May I see them? (Producing documents.)

Q. Thank you. Were you employed as office manager on July 1, 1946? A. Yes, sir.

Q. Did you have in your custody any of the records of the Sims-Thompson Company on that date?

A. Yes, sir.

Q. Did you have anything to do with the order for 80,000 pounds of sugar placed by the West Coast Supply Company on or about that date?

Mr. Carr: Just a moment. I am going to object. I have not objected up to now to these leading questions, but I am going to object on the ground that it is not only leading but it assumes something that is not in evidence.

The Court: Reframe the question.

Q. By Mr. Strong: What, if anything, did you do with [178] any orders of the West Coast Supply Company during 1946? A. On this particular order?

Q. Well, tell us in general first.

A. I didn't receive this particular order, but it came to my desk. It was given to me by Mr. Moseley.

Q. Mr. Moseley was employed at that time by Sims-Thompson Company? A. Yes, sir.

Q. What, if anything, did you do in connection with that order after you received it from Mr. Moseley?

A. I placed the order on the telephone for transmittal to San Francisco.

Q. Would you look among these paper which you have handed me and indicate where, if any, any of these documents are a copy of the teletype?

A. These are copies of the teletype.

The Court: Show it to defense counsel.

(Brief pause in the proceedings.)

(Testimony of Paul H. Neff)

Q. By Mr. Strong: Did you at the time you placed the order have in your possession a ration check covering the sugar called for by the order?

A. No, sir. We had the check number but not the ration check.

Mr. Strong: May I have these marked for identification, your Honor, two documents? [179]

Mr. Carr: We are unable to hear the witness.

The Court: Yes, speak up louder so that counsel may hear you.

The Clerk: Government's Exhibit 24 for identification

The Court: Consisting of two pages?

Mr. Strong: Two pages, your Honor. I don't know whether they are duplicates.

(The documents referred to were marked as Government's Exhibit No. 24 for identification.)

Q. By Mr. Strong: Are these two duplicates?

A. No, sir.

Q. What was the number of the ration check covering that order? A. 148.

Q. Did you at any time subsequent to that date receive the ration check itself?

A. I don't believe we received the ration check until after the order was teletyped. We had the ration number.

Q. Did you at any time after the order was teletyped receive the ration check itself? A. Yes, sir.

Q. Did you see the ration check when it arrived?

A. I don't recall this ration check in particular, but they all come across my desk.

(Testimony of Paul H. Neff)

Q. I show you what has been marked as Government's [180] Exhibit No. 3 for identification and ask you if you ever saw this check before?

A. I probably did. I don't remember the check in particular, but I see all of them.

Q. Do your records indicate when you received ration check 148? A. Yes, sir.

Q. Covering that?

A. The record shows the transmittal of the check to San Francisco on July 3rd.

Mr. Strong: May I have this marked for identification?

The Clerk: Government's Exhibit 25 for identification.

(The document referred to was marked Government's Exhibit No. 25 for identification.)

Q. By Mr. Strong: Do you have a pencil?

A. I have a pen.

Q. Would you mark or underscore here where it shows the receipt and the transmittal of the ration check?

Mr. Carr: I object to this as being hearsay.

The Court: You mean the records themselves are not kept in the regular order of business would not be admissible, Mr. Carr?

Mr. Carr: I think probably the records kept in the ordinary course of business would be admissible. He has testified to that, that he didn't know about receiving the [181] check. And now he is attempting to use the record to show it.

The Court: I think the objection would go to the foundation. You would have to lay a better foundation. The objection is good.

(Testimony of Paul H. Neff)

Q. By Mr. Strong: Did you prepare the original of this letter, Government's Exhibit 25 for identification?

A. I didn't prepare it personally, no.

Q. Was it prepared under your direction?

A. Yes, sir.

Q. Did you send the original of this letter?

A. Yes, sir.

Q. Did you examine the checks which are listed on this letter before you sent them?

A. I examine all checks.

Q. And you state that this shows what?

A. This letter?

Q. Yes.

A. It shows that the check was transmitted to San Francisco attached to the original of this letter.

Q. Do you now recall whether or not you transmitted this check, Government Exhibit No. 3 for identification, with this letter?

A. Yes, I must have. I can't remember every check that comes across my desk.

Mr. Carr: I move to strike that answer, your Honor. He [182] said, Yes, he must have. That is supposition.

Mr. Strong: I think it goes to the weight, your Honor.

The Court: It is not a very definite statement. I do not think the answer is objectionable, except it is so qualified that it is a question of the weight for the jury. I think "I must have" can go out, that part of it.

Mr. Carr: That is the part I mean, your Honor.

The Court: All right, it may go out.

Mr. Strong: May I have the answer read?

(Answer read by the reporter.)

(Testimony of Paul H. Neff)

Q. By Mr. Strong: Now, will you state what these other documents are with reference to this transaction?

A. This is a ledger sheet—

The Court: Now, wait. Have that marked for identification and show it to counsel first. Show it to counsel for the defense.

The Clerk: Government's Exhibit 26 for identification.

(The document referred to was marked Government's Exhibit No. 26 for identification.)

Mr. Strong: May we have the rest of them marked to save time, your Honor?

The Court: Yes.

The Clerk: As one exhibit?

Mr. Strong: No, separate exhibits.

The Court: As you mark them state, Mr. Cross, just what [183] they purport to be so that I may make a note of it.

The Clerk: Yes, your Honor.

The Court: Exhibit 27 purports to be what?

The Clerk: No. 27 for identification, your Honor, indicates that it contains entries that were shipped July 3rd to the Utah Wholesale Grocery and others and also to the West Coast Supply.

The Court: All right, that is 27.

The Clerk: 27 for identification. Government Exhibit 28 for identification is a broker's file copy of an invoice, No. 9,292. That is 28, your Honor. And Government's Exhibit 29 is a broker's file copy of invoice No. 9,291.



(Testimony of Paul H. Neff)

Government's Exhibit 30 for identification is a credit memorandum credited to the West Coast Supply Company, and that is dated August 13, 1946.

Government's Exhibit 31 for identification is a broker's file copy of invoice No. 9,292, dated September 9, 1946.

Government's Exhibit 32 for identification is a letter dated July 24, 1946, to Sims-Thompson Company from Allen Ziegler.

Government's Exhibit 33 for identification is a shipping order containing a broker's reference number 4,887.

Government's Exhibit 34 for identification is a shipping order containing a broker's reference number 4,886.

Government's Exhibit 35 for identification is a one-[184] sheet document of the West Coast Supply.

(The documents referred to were marked Government's Exhibits Nos. 27 to 35, inclusive for identification.)

Mr. Strong: Have you finished examining these documents?

Mr. Carr: For the moment.

Q. By Mr. Strong: I show you these documents, which are Government's Exhibits Nos. 25 to 35, inclusive, for identification and ask you whether these are part of the files of the company which you represent?

A. Yes, they are.

Q. Are they kept in the usual course of business by you or under your supervision?

A. Yes, sir.

Q. Now, these are documents relating to the transaction involving 80,000 pounds of sugar purchased by the West Coast Supply Company on July 1, 1946.

(Testimony of Paul H. Neff)

Mr. Carr: Objected to as outside the issue of this case. He keeps saying "sold to the West Coast Supply Company."

The Court: I think the question is unfortunately framed. You may ask him to whom it was shipped if you want to.

Q. By Mr. Strong: Are these the documents which show the transaction that took place on or about July 1, 1946, with reference to 80,000 pounds of sugar?

A. Yes, sir.

Q. Do your documents indicate to whom the sale and [185] shipment was made?

Mr. Carr: Objected to. The documents speak for themselves.

The Court: Yes, the documents will speak for themselves, counsel.

Mr. Strong: I offer Government's Exhibit 24 to 35, inclusive, in evidence.

Mr. Carr: I would like to see them. I cannot very well object to them in a group that way.

The Court: All right.

(Brief pause in the proceedings.)

Mr. Carr: Well, now, for example on Exhibit No. 35 you have got the words "Paul Ziegler" and "West Coast Supply—7-30-46" in pencil.

I am going to object to that document on the ground that the foundation has not been properly laid. It is not material to any issue in the case.

The Court: The objection is sustained on that ground. Let us dispose of each one now.

(Testimony of Paul H. Neff)

Do you have anything further to offer on the foundation of this, Mr. Strong? Mr. Carr calls attention to some pencilled notations there.

Mr. Strong: Yes.

Q. Would you examine Government's Exhibit No. 35 for identification and state whether you know who, if anyone, [186] wrote the pencilled notation?

A. It looks like Mr. Moseley's writing.

Q. You did not write it? A. No, I didn't.

Mr. Strong: I withdraw Government's Exhibit 35, if your Honor please.

The Court: All right.

Mr. Carr: Is that a "8", Mr. Clerk, or a "7"?

The Clerk: That is "7."

Mr. Carr: I will object to all of these, and that is from number—

The Court: 24.

Mr. Carr: 24 through—

The Court: 34, inclusive.

Mr. Carr: 34 or 35, your Honor?

The Court: 34. Counsel has just withdrawn 35.

Mr. Carr: Oh, yes, that is right, Exhibit 35. Through 34 on the ground as I have heretofore stated, without enlarging on it, that the information does not state an offense and that there is no evidence to bind the West Coast Supply Company to this transaction. It is immaterial.

The Court: You are not objecting to the foundation?

(Testimony of Paul H. Neff)

Mr. Carr: No, I won't object to that. But I do want to specifically now object to Exhibit 32, your Honor. That is a letter purporting to be signed by Allan Ziegler. Perhaps your [187] Honor will want to see that.

I object to that as not within the issues of the case. It does not tend to prove or disprove any issue in the case. It is immaterial and it is inadmissible against either Paul Ziegler or Allan Ziegler who is not a defendant in this case.

It has nothing to do with the transaction involved.

Mr. Strong: May I be heard on that, your Honor?

The Court: There is no foundation laid establishing the signature of Allan Ziegler, is there?

Mr. Strong: There is foundation laid, your Honor, for establishing the signature of Allan Ziegler. This is part of the records that these people have in connection with this 80,000 pound transaction. I can lay a further foundation as to where they got the letter. I think that letter speaks for itself in dealing with the transaction which was carried on between the witness's firm and the purchaser of the sugar.

The Court: That part of it is all right. But the second part of it is what the court feels is objectionable. In other words, suppose this were written by the janitor of the building. There is nothing here to show it was written by this man. That is my thought about the matter.

Mr. Strong: I will withdraw it for the time being just to save time, your Honor.

Has your Honor ruled on the offer of the balance of the documents? [188]

(Testimony of Paul H. Neff)

The Court: Yes. The balance of the documents will be admitted, unless there is some specific objection such as pointed out to the court in this Exhibit 32.

The Clerk: That will include Government's Exhibits 24 to 34, inclusive but excluding 32.

Mr. Carr: You excluded one other one.

The Clerk: Yes, 35 was excluded.

The Court: 35 was not excluded. It was withdrawn.

Mr. Carr: Withdrawn, I mean.

(The documents referred to were marked Government's Exhibits Nos. 24 to 31, inclusive and 33 to 34, inclusive, we introduced in evidence.)

Q. By Mr. Strong: As far as your recollection goes in the records which you have disclosed did you at any time receive a ration check for the 80,000 pounds of sugar covered by the transaction we have been discussing here?

Mr. Carr: I object to that question. It is compound and confusing.

The Court: Read it, please.

(Question read by the reporter.)

The Court: I think it calls for a conclusion of the witness, counsel. The evidence will develop if it was in connection with this or not.

Ask him if he received the ration check on or about this date, and it will then just take a little longer to get the evidence. [189]

Mr. Strong: Yes, your Honor.

(Testimony of Paul H. Neff)

Q. Did you receive a ration check on or about July 1, 1946, from the West Coast Supply Company?

Mr. Carr: Objected to as specifically leading and assuming the issue that is yet to be proved and decided by the jury.

The Court: You mean a ration check was received by this witness from a certain company he cannot state on the stand?

Mr. Carr: It calls for a conclusion, your Honor. That is my objection.

The Court: In other words, he cannot state that he received a check?

Mr. Carr: He can state he received a check, yes.

The Court: If he chose another check from the Standard Oil Company—

Mr. Carr: The check then speaks for itself, your Honor. That is my contention.

The Court: This witness could bring in 40,000 checks and say, "These are 40,000 ration checks we received on that date. Which do you want?" And you say, "You cannot say that it is from the West Coast Supply Company"?

Mr. Carr: Mr. Strong is turning around and asking a leading question after the witness has already testified, and I do not think it is proper to put it in this form.

The Court: I think that is highly technical and an entirely improper objection. [190]



(Testimony of Paul H. Neff)

Mr. Carr: Well, I take exception. I may respectfully do so to your Honor's remark, and I ask you to instruct the jury that means no reflection upon counsel.

The Court: I do not intend to reflect upon counsel on either side.

I expect to preside at this trial and keep it in an orderly manner. I expect to rule according to what I think the law is.

Proceed.

Q. By Mr. Strong: May I have your answer?

A. This check obviously went across my desk. I don't remember the check in particular.

Q. Not this check, but did you receive a check?

A. Yes, sir. I would have to receive a check to cover it.

The Court: That may go out.

Q. By Mr. Strong: I am asking you whether you did?

A. Yes, sir, I received a check.

Q. Was that check the check No. 148, as shown on your various invoices and other documents?

A. Yes, sir.

Q. Was that for 80,000 pounds of sugar?

A. Yes, sir.

Mr. Strong: At this time, your Honor, I offer in evidence Govenment's Exhibit 3 for identification which is the check. [191]

(Testimony of Paul H. Neff)

Mr. Carr: I object to it on the ground, if the court please, no proper foundation has been laid, no knowledge, no evidence of any knowledge on the part of the West Coast Supply Company, no evidence as to who put on the printing "West Coast Supply Company," and it is inadmissible against either Paul Ziegler or the West Coast Supply Company until connected up; that the check indicates or at least has on the face of it a suspicion of alteration.

I object to it on the ground that the information does not state an offense and upon the further ground that the partnership cannot be guilty of an offense and, thereby, it is not admissible.

The Court: Will counsel point out the alteration to which he directs the court's attention?

Mr. Carr: I am contending that "West Coast Supply Company" in typing, that there is no foundation for it, your Honor, and from the evidence heretofore placed in the record, plus the statement of counsel at the beginning of the trial that there was something questionable about the checks, and as far as the signature is concerned, I am basing my objection on that ground.

The Court: The check will be admitted against Paul J. Ziegler. It will not be admitted as evidence against the West Coast Supply Company.

The Clerk: Government's Exhibit 3 in evidence. [192]

(The document referred to was marked Government's Exhibit No. 3 and introduced in evidence.)



(Testimony of Paul H. Neff)

Q. By Mr. Strong: Did you ever receive any inquiries or complaints from the West Coast Supply Company as to the 80,000 pounds of sugar involved in this transaction?

Mr. Carr: That is objected to as immaterial, on the further ground that the partnership charged in the information cannot be guilty of a criminal offense.

The Court: Overruled. I understood that there was a specific section of the law which included partnerships. Or am I wrong?

Mr. Strong: Absolutely. May I read it to you, your Honor?

The Court: Yes. It was argued in another case that I had in Fresno.

Mr. Carr: Your Honor, may I correct that? That was a corporation.

The Court: But this was also read. These sections were also read to me.

You are right. That was a corporation.

Mr. Carr: That was a corporation.

The Court: You are right.

Mr. Strong: This is Title III of the 2nd War Powers Act. It is contained in 50 U. S. Code Appendix, Section 633.

Title III is Priorities Powers. This is the section [193] under which this information is drawn.

Subsection (3) of Section 2 (a) of this Title states as follows—I shall only read a part of it. Well, I will read the whole section:

“The President shall be entitled to obtain such information from, require such reports and the keeping of such

(Testimony of Paul H. Neff)

records by, make such inspection of the books, records and other writings, premises or property of, any person (which, for the purpose of this subsection (a), shall include any individual partnership . . .) . . .”

And there is some more in the sentence.

Mr. Carr: I might just say this: that the statute also provides for a partnership to make an income tax return, but you cannot find one case in the book where you indict a partnership, you indict the partners.

Mr. Strong: It may be true, but the Congress provides that they may prohibit a partnership from acting, and that “person” is a partnership.

The Court: You have the record clear; and if there is any error by the court, it may be corrected.

However, I am just admitting this last Exhibit 3 against Paul J. Ziegler and not against the West Coast Supply Company.

The Court: Proceed.

Mr. Strong: There is an objection on which your Honor —194] has not ruled which was made to the question asked the witness.

The Court: Yes, it is overruled.

The Witness: There was a letter about a shortage of one bag of sugar on one of the deliveries.

Q. By Mr. Strong: Was that letter received by your company?

A. Yes.

Mr. Carr: If the court please, you have just ruled the letter out of evidence; and I do not think it is proper to get in by indirection what your Honor has just excluded from the evidence. I think that is Exhibit 32, your Honor.



(Testimony of Paul H. Neff)

The Court: I think there, Mr. Strong, the objection is that there is no showing here that this is an authorized signature. I believe that is the trouble.

Mr. Strong: If your Honor please, I am not offering the letter for the signature. This is preparatory to the next question.

The Court: All right, as long as you do not offer the letter. If they got notice there was some objection, you can go that far with the witness, but not into the letter.

Mr. Strong: I am not trying to get the letter in by the back door, your Honor.

The Court: All right.

Q. By Mr. Strong: Did you speak to anyone at the West Coast Supply Company in that connection? [195]

A. No, sir.

Q. Did you do anything in that connection?

A. There was a teletype sent to San Francisco regarding the shortage.

Q. Is that all that was done?

A. That is all. The trucking company made it up later.

Mr. Strong: That is all.

Mr. Carr: Is that all?

Mr. Strong: Your witness.

May I ask one more question?

The Court: Yes.

Mr. Strong: Thank you.

Q. Did you receive payment for 80,000 pounds of sugar?

A. Checks in payment of sugar are all mailed direct to San Francisco.



(Testimony of Paul H. Neff)

Q. Do you receive a commission on sales of sugar?

A. Yes, sir.

Q. Did you receive a commission in this case?

A. Yes, sir.

Mr. Strong: That is all.

Cross Examination.

By Mr. Carr:

Q. When a sugar ration check comes into your office it usually comes by mail, does it? [196]

A. Yes, sir.

Q. Who opens the mail?

A. The girl at the switchboard.

Q. What will she do with a ration check, the general practice?

A. They come to my desk.

Q. Do you examine the ration checks yourself?

A. I look through the ration checks to be sure they are in order.

Q. Is it a practice down there that if you find the check is not properly made out, in your opinion, do you change the check in any way?

A. No, sir.

Q. Never have done that?

A. No, sir.

Q. All right. I am going to show you Exhibit No. 3, and I am going to ask you the specific, positive question whether or not you can state under oath that that "West Coast Supply Company" was written on there at the time the check arrived at your concern?

Mr. Strong: Your Honor, I object. The witness has said he does not remember seeing it.

The Court: This is cross examination. Counsel has the right to ask these questions.

(Testimony of Paul H. Neff)

Mr. Strong: I will withdraw the objection. [197]

The Witness: That check must have been order, or it would have gone back to West Coast for correction.

Mr. Carr: I move to strike that answer as not responsive.

The Court: Strike it out.

Mr. Carr: And ask that the question be repeated.

Now, listen carefully to it and see if you can answer it.

(Question read by the reporter.)

The Witness: Well, I have stated that I don't remember this check in particular; and I can't say that I do remember it in particular. But the check must have been in order or it would have gone back.

Mr. Carr: I move to strike that portion of the answer, your Honor, as not responsive.

The Court: It may go out.

Q. By Mr. Carr: As a matter of fact, Mr. Neff—I will withdraw that.

How many typewriters do you have or did have at your office at that time? A. Three.

Q. Three? What kind of typewriters were they; do you know?

A. One is a Remington and one is an Underwood. I don't recall the other one.

Q. Are they still there? [198] A. Yes, sir.

Q. And they are the same typewriters that were in your office on July 1, 1946? A. Yes, sir.

Q. Is it not a fact, Mr. Neff, that that check arrived at—what is the name of your concern?

A. Sims-Thompson Company.

(Testimony of Paul H. Neff)

Q. —Sims-Thompson Company, and that to your knowledge someone in that company typed in "West Coast Supply Company"? A. No, sir.

Q. You say that is not true?

A. We never do. We never do that.

Q. I am not asking you that. I am saying that is not true; is that your testimony?

A. That is not true.

Q. You are positive in that? A. Yes, sir.

Mr. Carr: Now, at this time, your Honor, I want to request permission to have an expert examine the typewriters at that concern and to make a comparison with this check. I don't know how much delay it will take. I am not asking for a continuance, but I want the privilege at least to ascertain those facts.

Mr. Strong: If your Honor please, I object to it simply on this ground: [199]

I do not think it makes the slightest bit of difference whether the name "West Coast Supply Company" was on that check when it left the hands of Paul Ziegler or anybody else or whether that "West Coast Supply Company" was subsequently added to that check by anyone.

I think that the prime consideration is whether that check was a ration check issued to transfer ration points to the seller of sugar in connection with the purchase of sugar which was delivered to either the West Coast Supply Company or the defendant, and the omission or presence of that name "West Coast Supply Company" at any particular time is wholly immaterial.

The statute, as a matter of fact, does not have to be construed to require that a check be completely drawn at the moment that it leaves the hands of the person drawing

(Testimony of Paul H. Neff)

it. Whether a check is drawn is a technical question, and it may relate to the time that it reaches the bank on which it is drawn. And while I do not want to foreclose any examination into the facts as to the typewriters—I have no objection to that—I don't think it would make any difference at all one way or the other whether the typewriters were or were not the same and whether the name was or was not added by Mr. Ziegler or somebody else at any time during the process of transferring this sugar.

The Court: Well, the defense has the right to pursue [200] whatever theory they feel is correct in the matter.

Mr. Carr: I shall try to avoid unnecessary delay, but I feel compelled to prove that.

The Court: The request will be granted.

Q. By Mr. Carr: You talked to Mr. Strong during the lunch hour, did you? A. No, sir.

Q. When was the last time you talked to Mr. Strong?

A. Yesterday morning.

Q. At that time did you discuss with him whether "West Coast Supply Company" appeared on Exhibit No. 3?

A. Mr. Strong asked me if we ever did that, and I told him that it was not the practice of our office to alter or touch a ration check in any way. If it was not in order, it went back to the customer for correction.

Q. Mr. Strong specifically asked you, though, if "West Coast Supply Company" was on this check when it came to you, did he not? A. Yes, sir.

Q. And you told him it was not, did you not?

A. No, sir.

Q. What did you tell him?

A. I told him exactly what I told you.

(Testimony of Paul H. Neff)

The Court: What did you tell him?

The Witness: I told him that if there was any irregularity on any ration check, it went back to the customer for correction.

Q. By Mr. Carr: Is that the only time you discussed this matter of whether or not "West Coast Supply Company" appeared on Exhibit No. 3 with any Government official?

A. Yes, sir.

Q. Did you not discuss it with the OPA agents?

A. No, sir.

Q. Have you talked to the agents?

A. No, sir.

Q. That is the only time you talked to Mr. Strong?

A. Yes, sir.

Q. And I assume Mr. Strong told you to tell the truth at that time?

A. Yes, sir.

Mr. Strong: Are you finished?

The Court: Any questions?

Redirect Examination.

By Mr. Strong:

Q. Did I not tell you to tell the truth at all times?

A. Yes, sir.

Q. I specifically told you that, did I not?

A. Yes, sir.

The Court: He said he did now. [202]

Mr. Strong: It is just that there was an implication.

The Court: No, there wasn't an implication.

Mr. Carr: I was just picking up an old practice that I know is carried on in the Department.

The Court: Any other questions?

(Testimony of Paul H. Neff)

Mr. Strong: None.

The Court: That is all.

Mr. Carr: Could this witness remain on subpoena, your Honor, subject to call?

The Court: Yes, if you have any other questions.

Mr. Carr: In connection with the examination of the typewriters, this typewriter matter.

The Court: The expert, if he goes in and brings back samples and testifies—

Mr. Carr: I want him to identify the typewriters, this particular witness. He can go, but subject to call.

The Court: He will be available if the Government wants him or if the defense wants him.

Call your next witness.

Mr. Strong: Well, your Honor, I am not quite clear as to what this process is of having the typewriters examined.

Mr. Carr: You leave that to us, Mr. Strong. We will work that out.

The Court: I have granted the motion of the defendant here to have the specimens of the typewriters in the office [203] of the Sims-Thompson Company brought into court.

Mr. Strong: I just proceed with my case?

The Court: Oh, yes.

Mr. Strong: Thank you, your Honor.

Mr. Smith. First, may I have a recess at this time, your Honor? It is close to 3:00 o'clock.

The Court: If it will help you to organize, we will take a recess.



Ladies and gentlemen of the jury, remember the admonition I have heretofore given you. Do not discuss the matter among yourselves or permit anyone to discuss it in your presence. Do not form or express an opinion on the matter until it is finally submitted to you under the instructions of the court.

(Brief recess.)

The Court: Do you stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Is it stipulated the defendant is in court?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Proceed.

Mr. Strong: Mr. Smith. [205]

LAWRENCE A. SMITH,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Lawrence A. Smith.

The Clerk: L-a-w-r-e-n-c-e A. S-m-i-t-h?

The Witness: That is right.

The Court: Let the record show that the defendant has submitted to the court proposed instructions.

Mr. Strong: Let the record show that I have received a copy, too.

The Court: All right.

(Testimony of Lawrence A. Smith)

Mr. Carr: Your Honor, we may have additional instructions. I don't want to preclude myself. I don't think there will be many.

The Court: As long as I have some instructions to work on, additional instructions will be considered.

Direct Examination.

By Mr. Strong:

Q. What is your occupation?

A. Salesmanager in charge of the sugar department, Kelley-Clarke Company.

Q. Did you hold that position in July, 1946?

A. I did. [205]

Q. I show you Government's Exhibit 15-A, -B, -C, and -D and ask you if you ever saw these before?

A. There is two of these documents, I believe, are the ones you asked me to bring up.

Q. Yes. Are you—

A. The others I haven't seen.

Q. Are you acquainted with that transaction?

A. This is a W.D.A.—warehouse delivery advice, this copy here.

The Court: What is the exhibit number?

Mr. Strong: 15-C.

The Court: All right.

Q. By Mr. Strong: I do not want you to describe the exhibit. I want to know whether you are acquainted with that transaction that it represents.

A. I don't understand your question—"acquainted."

The Court: Listen to the question. Repeat the question.

(Question read by the reporter.)

(Testimony of Lawrence A. Smith)

Mr. Strong: Let me reframe it.

Q. Do you know anything about that transaction?

A. Yes.

Q. In your official capacity with the Kelley-Clarke Company did you have anything to do with the transaction?

A. Nothing except some detail pertaining to it.

Q. What detail? [206]

A. The order was placed—I didn't take the order—and the order comes into the office.

The Court: No, not what you did not do. Listen to the question.

It is difficult for lay witnesses to understand the procedure in court. Re-read the question.

(Question read by the reporter.)

The Witness: The ration check that comes in in the morning would go across my—

The Court: No, not what would be. Listen to the question. Counsel has asked you for just what you did in connection with this transaction, if anything.

Now, just what you did, not what might have been done or what would be done. All right.

The Witness: The only thing that I did with this transaction was it would be with other documents that come across my desk for matching with orders, and they would be handed to the girl in the office to pass on. That would be my duties with the transaction.

Q. By Mr. Strong: You say two of those documents are documents which you produced?

A. No, I didn't produce these documents. The girl in the office types those documents.

(Testimony of Lawrence A. Smith)

The Court: No, that is not the question. He did not ask you who made them up. [207]

Who brought them here? Did you produce them in court?

The Witness: I brought these documents up. I beg your pardon.

The Court: All right.

Q. By Mr. Strong: Did you have anything to do with the ration check which covered that transaction?

A. Nothing, except to match it with the order and to hand it on to the girl to send to the refinery.

Q. Is that what you did?

A. I received the ration check as it comes into the office.

Q. In this particular instance is that what you did in this instance? A. That is right.

Q. What did you do with the check?

A. It would be passed on to the girl for recording in the ration book and sent on to the refinery.

Q. You send it on to the refinery?

A. We mail it to the refinery, no.

Q. Do you dictate the letters? A. No.

Q. But the check comes into your possession at some time during this process?

A. When the mail comes in.

Q. I show you Government's Exhibit 5 and ask you whether [208] you recall ever seeing this check before?

A. Yes, you showed me this check yesterday.

Q. Before yesterday did you ever see it?

A. I couldn't remember. There is hundreds of checks that go through.

(Testimony of Lawrence A. Smith)

Q. I see. In connection with this transaction covering 30,000 pounds of sugar, as represented by Government's Exhibits 15-A, -B, -C and -D, did you receive a ration check?

Mr. Carr: I don't want to be unfair, but I think he has answered that pretty clearly, your Honor.

The Court: Yes.

Mr. Strong: I am not sure of the answer, your Honor.

Mr. Carr: He said he did not know, I thought.

Mr. Strong: That is not my recollection.

The Court: Read the witness's answer.

(Answer read by the reporter.)

Q. By Mr. Strong: That is with reference to that particular Government exhibit, the check itself.

Now I am asking whether you received a check or not—that is my question, your Honor—this check, Governments' Exhibit 5.

A. Yes, we received a check for the transaction. We would have to receive a check.

The Court: No, strike out "we would have to receive a check." [209]

The Witness: Oh!

Q. By Mr. Strong: Do any of your records show that fact? A. Yes.

Q. I am handing back to you some documents which you handed to me the other day.

Will you indicate which of the records show that?

A. The records showing—

The Court: Now, wait.

Mr. Strong: Just pull it out and hand it to me.

The Court: And identify it.

(Testimony of Lawrence A. Smith)

Mr. Strong: May I have this marked for identification?

The Clerk: Government's Exhibit No. 36 for identification.

(The document referred to was marked Government's Exhibit No. 36 for identification.)

Q. By Mr. Strong: I show you Government's Exhibit 36 for identification and ask you to state what this is.

A. This is a sheet from our sugar rationing book which shows the record of the check, the number of the check—

Mr. Carr: Just a moment. I submit that the foundation has not been laid for this document. Furthermore, the witness is not shown to be qualified to speak, and third, he is reading from an exhibit which speaks for itself.

The Court: A better foundation should be laid, of course. [210]

Q. By Mr. Strong: Mr. Witness, do you have charge of the records with reference to the sugar rationing checks at the Kelley-Clarke Company?

A. I would have charge of the department in which the records are kept, yes.

Q. Are those records kept officially under your custody? A. Yes.

Q. Is that Government's Exhibit 36 a part of those records? A. Yes.

Q. That is part of the records kept in the due course and the ordinary course of business of your company?

A. Yes.



(Testimony of Lawrence A. Smith)

Mr. Strong: I offer this document in evidence, your Honor.

Mr. Carr: Objected to as being immaterial, incompetent as against either the partnership or Paul J. Ziegler, the defendant. And I would like, if I may, to incorporate those additional objections I made a moment ago to one of the checks, your Honor.

The Court: It may be incorporated. It is incompetent and, therefore, that goes to the fact it has nothing to do with the transaction.

Mr. Carr: Pardon me. Perhaps I should be more specific and say, your Honor, that it is not binding upon [211] either of the defendants.

The Court: There are legends on here and numbers on here that certainly would have to be explained before I could pass on the objection.

Mr. Strong: Well, that is what I was trying to do before, your Honor, when the other objection was sustained.

The Court: Mr. Cross.

The Clerk: Yes, your Honor. (Handing document to counsel.)

The Court: The objection that an instrument speaks for itself is good when you can look at the instrument and read it and know exactly what it purports to be. But if there are trade symbols or abbreviations, then the instrument does not speak for itself without someone who can interpret those to the court or the jury. All right.

Q. By Mr. Strong: Would you indicate where this document relates to the transaction of the 300,000 pounds of sugar as shown by Government's Exhibits 15-A, -B, -C and -D?

(Testimony of Lawrence A. Smith)

Mr. Carr: I think that is 30,000 pounds.

Mr. Strong: 30,000 pounds. I am sorry.

The Witness: That would be in this last transaction dated July the 1st, check No. 145, invoice No. C-4280.

Q. By Mr. Strong: You are now reading from Government's Exhibit 36 for identification? [212]

A. That is right.

Q. On that invoice 4-C280 is the same as Government's Exhibit 15-A for identification?

A. C-4280, right.

Q. And this statement here in the column which is headed "Check - Date - No.," the legend being "7/1" and the number being "145," what does that show?

A. That is the date of the check that came in the office and the number.

Q. The number on the check? A. Right.

Q. Where, if anywhere, does it show the value of the check?

A. Right over here in this column, "Value of Check,"

Q. What does it say? A. "30,000 pounds."

Q. And it says "7-3" after that. What is that?

A. That is the date it was mailed to the refinery.

Q. Does this document in any way show the delivery of 30,000 pounds of sugar? A. It does not.

Mr. Strong: Thank you.

I offer this in evidence.

Mr. Carr: Same objection.

The Court: Subject to the same objection, it is in [213]

The Clerk: Government's Exhibit 36 in evidence.

(Testimony of Lawrence A. Smith)

(The document referred to was marked Government's Exhibit No. 36 and introduced in evidence.)

Mr. Carr: May I add just one objection, your Honor?

The Court: Yes.

Mr. Carr: It just slipped my mind for the moment.

This check being for 30,000 pounds, I object to the introduction of that on the additional ground that the bank account shows on the date in question there was to the credit more than 30,000 pounds of sugar. For that reason it could not be an offense.

Do I make my self clear?

The Court: Yes, I understand your objection.

Mr. Strong: May I be heard?

The Court: Yes.

Mr. Strong: There were four checks issued on the same day. They are considered as part of one transaction unless they can be shown that anyone came before any of the others. The four checks are in total in excess of the balance.

I believe that the record itself will show that any one of these checks is also in excess of the balance.

Mr. Carr: May I pass this up to the court and then let the court look at the figures? And then you will see what the balance is. That is as of July 1st.

(Document handed to the court.) [214]

Mr. Strong: May I add this, your Honor? The witness from the bank specifically testified that the first check that came in was the check for 600,000 pounds or 660,000 pounds—I don't remember which it is—and that he at that time questioned its being in excess. Consequently, all of these checks came after that time.

(Testimony of Lawrence A. Smith)

Mr. Carr: Well, now, I submit that was not my understanding of his testimony. He did not say which one came in first, I don't think, Mr. Strong. I may be in error about that.

Mr. Strong: I think he did, your Honor. It is possible, your Honor, that that record itself shows which is the first check that came in.

The Court: Yes, it does. But I want to be sure of it.

This record shows that on July 11th, 1946, there was a credit of 231.96. That was the balance. And on July 25 there was a check for 6,000. And on that date the record shows an overdraft of 5,768.04.

That is followed by a check for 300, then 6,600 and another check for 800.

Those three last checks that I have named were charged against this account on August 1, 1946, leaving an overdraft of 13,468.04. And then on August 22nd another check for 50.00, an overdraft then of 13,518.04.

I wish both counsel would examine the exhibit to see if [215] I am correct in that interpretation of the document.

Mr. Strong: May I indicate to your Honor—I don't know whether your Honor recalls the witness's testimony—but this is a machine that is used, a dollar and cents machine; and that isn't as your Honor read it as appears here.

These are thousands; so that the first check is not for 6,000 but is for 600,000.

(Testimony of Lawrence A. Smith)

The Court: Yes. But I was reading it exactly as it appears in that exhibit because I have no right to read anything else into it.

Mr. Strong: Yes. I thought possibly it was not clear.

Mr. Carr: Well, perhaps I did not make myself too clear on it.

I simply stated this: If I have \$10,000 in the bank and I write a check \$12,000 and one for five, the \$12,000 check is sent back but the \$5,000 check is cashed. So it is not an overdraft.

Simply stated, that is it.

The Court: No, the first one would be paid if the 6,000 went in first. If the small check went in first, you would not have an overdraft against that.

Mr. Carr: That's right. But if it went in second, it would be paid, too, your Honor, because if you sent a check into the bank on an account of, say, that \$10,000 and you wrote a check for \$12,000, the bank would immediately send [216] that check back.

The Court: That is right.

Mr. Carr: Then your \$5,000 check, which was written second, would go in and be paid.

The Court: That is true, if they had the money there to pay it.

Mr. Carr: And that was the situation there. There wasn't enough in the account to cover this 80,000 pounds of sugar that is involved in counts 7 and 8.

(Testimony of Lawrence A. Smith)

Mr. Strong: I submit to your Honor that there was not sufficient in the account.

The amount in the account, as shown by that document, is on that date 23,196 pounds. And a check for 80,000 pounds could not be drawn against 23,196 pounds. It is obviously insufficient by 50,000 pounds.

The Court: That is an argument to the jury by both sides.

Mr. Carr: That is my objection, counsel.

The Court: Yes, overruled.

Mr. Strong: May I have the last question?

(The question referred to was read by the reporter as follows:

“Q. Does this document in any way show the delivery of 30,000 pounds of sugar?”)

Q. By Mr. Strong: Did you receive the commission, [217] broker's commission, in connection with the purchase of the sugar involved that we are talking about here?

A. Yes, we did.

Q. Now, let me ask you: Do I understand correctly all of the ration checks go across your desk?

A. That is right.

Q. At any time during July, 1946, was there any sale of sugar to anyone for which your firm did not receive a ration check for the full amount?

Mr. Carr: Objected to as being immaterial.

The Court: Yes, I think that is immaterial.

Mr. Strong: I submit, your Honor, that if he has received all checks for all sales, it must necessarily include this check for this sale.



(Testimony of Lawrence A. Smith)

Mr. Carr: That is a very serious way to pin down a defendant, though, by using the word "all" and encompass all transactions.

It seems to me the specific transaction involved here is the question.

The Court: I think it is this transaction and this check we are dealing with, counsel.

Mr. Strong: All right. I offer in evidence Government's Exhibit 5 for identification which is a ration check for 30,000 pounds.

Mr. Carr: You are offering that? [218]

Mr. Strong: Yes, sir.

Mr. Carr: I am objecting to it on many and varied grounds I have already set forth and particularly with reference to both defendants. First it is a partnership, and there is no knowledge shown at all nor authority for the name to be on there. There is the suspicion of alteration so far as the defendant Ziegler, Paul Ziegler, is concerned; that it is inadmissible as against him because, first of all, the information does not state an offense against him and that the posture of the evidence at this time is such that no offense can be stated against either of the defendants under any of the counts in the information.

The Court: It will be admitted against Paul J. Ziegler. It will not be admitted against the West Coast Supply Company and none of the exhibits that have been introduced in evidence up to this time have been admitted against the West Coast Supply Company.

The Clerk: Government's Exhibit No. 5 in evidence.

(The document referred to was marked Government's Exhibit No. 5 and introduced in evidence.)

## [GOVERNMENT'S EXHIBIT NO. 5]

NON-TRANSFERABLE

THE UNITED STATES OF AMERICA

OFFICE OF PRICE ADMINISTRATION

CHECK NO. 145

TRANSFER TO THE

SUGAR

RATION BANK ACCOUNT OF

Spencer Sugar Co.  
(NAME OF BEL E)Thirty Thousand and

(A. AMOUNT IN WORDS)

TO THE

UNION BANK &amp; TRUST CO.

OF LOS ANGELES  
COMMERCIAL

SAVINGS

TRUST

FR-121 LOS ANGELES, CAL.

16-77

West Coast Supply Co.  
(PRINT OR TYPE NAME OF YOUR ACCOUNT)Paul J. Ziegler  
(AUTHORIZED SIGNATURE)

AMOUNT IN FIGURES
3000
POUNDS OF
SUGAR

DATE

7/1/46

8-20-48  
O.P.H. Rec 3  
Mr. C. J. King (Personal)

RECEIVED FEDERAL RESERVE BANK OF LOS ANGELES JUL 16 1946	15-16 AS 485 77 76 16 FEDERAL RESERVE BANK OF LOS ANGELES
----------------------------------------------------------------	--------------------------------------------------------------

17166a West Coast Supply Co.  
5/14/46  
3/15/47

(Testimony of Lawrence A. Smith)

The Court: All right.

Mr. Strong: That is all.

The Court: Cross examine.

Mr. Carr: That is all I have, your Honor.

The Court: That is all.

(Witness excused.) [219]

The Court: Call your next witness.

Mr. Carr: That was Exhibit 5; am I right?

The Court: Exhibit 5, yes.

Mr. Carr: Your Honor, I am sorry. I did not hear your ruling. May I have the reporter read it to me?

The Court: Yes.

(Record read by the reporter.)

Mr. Strong: Mr. Ramseur.

STEPHEN D. RAMSEUR,

called as a witness by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Stephen D. Ramseur, R-a-m-s-e-u-r.

The Clerk: How do you spell "Stephen"?

The Witness: S-t-e-p-h-e-n.

Mr. Carr: What was that name?

The Clerk: Stephen D. Ramseur, R-a-m-s-e-u-r.

Direct Examination.

By Mr. Strong:

Q. What is your occupation, Mr. Ramseur?

A. Investigator for the Alcohol Tax Unit, Bureau of Internal Revenue.

(Testimony of Stephen D. Ramseur)

Q. Did you at any time during 1946 have occasion to [220] visit the premises of the West Coast Supply Company? A. I did, yes, sir.

Q. What was that in connection with?

A. The first time was in connection with the serving of a demand letter.

Mr. Carr: Serving what?

(Answer read by the reporter.)

Q. By Mr. Strong: When was that?

A. On November the 14th.

Q. What year? A. What?

Q. What year? A. '46. 1946.

Q. Were you at that time on the premises of the West Coast Supply Company in connection with your official duties? A. Yes, sir.

Q. Were you engaged in the making of an investigation for the Alcohol Tax Unit?

Mr. Carr: Objected to as being wholly irrelevant. He has already put him on the premises, your Honor. I don't think the purpose that he has there is material, bringing some other investigation into this case.

The Court: I do not think it is either. I shall sustain the objection.

Q. By Mr. Strong: Did you on that occasion see the [221] defendant Paul J. Ziegler?

A. Not on that occasion, no, sir.

Q. Whom did you see? A. Allan Ziegler.

Q. Did you make any requests of Allan Ziegler?

Mr. Carr: That is objected to as wholly immaterial. Allan Ziegler is not involved in this case in any way. There is no proof concerning Allan Ziegler at all. He is not a defendant.

(Testimony of Stephen D. Ramseur)

The Court: If it has something to do with the partnership it might be material, Mr. Carr. That would be the only theory.

Mr. Carr: Yes, I grant you that possibly could be the only theory.

The Court: All right.

Mr. Strong: That is the only theory.

The Court: All right.

Mr. Carr: But I am not waiving my objection.

The Court: Oh, no.

Q. By Mr. Strong: Will you state what was said by you and by Allan Ziegler?

A. What was said by Allan Ziegler?

Q. And by you on that occasion.

A. Well, we asked that form—the demand letter is a department form, the original and a duplicate, the copy. The [222] copy has on the reverse side a place for the signature of the person you served it on acknowledging receipt. We asked him if he would sign the acknowledgment, and he said no. I asked him if he would acknowledge that he had received it, and he said he was making no statements. And that was all that was said.

Mr. Carr: Now, then, I move to strike all of that testimony. It is wholly immaterial, and it is prejudicial to this defendant.

The Court: I do not know. Maybe he was there before.

Mr. Carr: That particular conversation certainly has no bearing on the issue in this case. The fact that Allan Ziegler refused to cooperate with him, your Honor, certainly does not in any way mitigate for or in behalf of defendant or against him.



(Testimony of Stephen D. Ramseur)

The Court: That is proper in direct. That has nothing to do with the case so far.

Mr. Strong: What was the ruling?

The Court: That has nothing to do with the case so far.

Mr. Strong: I would like to question him further.

The Court: All right.

Q. By Mr. Strong: Was that about all that was said? A. That is about all.

Q. Did you return on a subsequent occasion?

A. I did. [223]

Q. Was that in connection with the demand order?

A. It was, yes, sir.

Q. Did you see anybody there?

A. Mr. Paul Ziegler at that time.

Q. The defendant in this case? A. Yes, sir.

Q. Who else was present?

A. Well, there were a number of office employees. We waited out in front.

Q. Who is "we"?

A. Mr. Tingle and I, investigator Tingle and I who were working together.

Q. And when was this second occasion?

A. The 21st of November, 1946.

Mr. Carr: It is very difficult to hear the witness.

The Court: Speak a little clearer so the jury and counsel can hear you.

Q. By Mr. Strong: Did you have any discussion with Paul J. Ziegler on that occasion?

A. I did, yes.

Mr. Carr: What was that date? May I have that?

Mr. Strong: The 21st of November. Is that right?



(Testimony of Stephen D. Ramseur)

The Witness: Yes.

Mr. Carr: What year?

Mr. Strong: '46. [224]

Mr. Carr: I object to any conversation in November, '46, unless it is in the form of an admission.

The Court: That is the only purpose it could have. Proceed.

Q. By Mr. Strong: Go ahead.

A. We called on Mr. Paul Ziegler. We sent the letter, demand letter to San Francisco, the main office, and they returned the copy.

The Court: Not what you did with someone else. Just listen to the question. Repeat the question again.

The Witness: We called on Mr. Paul Ziegler and asked him if he would sign or asked his brother Allan to sign the receipt for the demand letter.

Q. By Mr. Strong: Yes?

A. And Mr. Ziegler stated—

The Court: Which one now? You have named two.

The Witness: Mr. Paul Ziegler stated that he would not request or ask his brother to sign it nor would he sign it.

Q. By Mr. Strong: Yes?

A. That he had no intentions of complying with the request in the demand letter.

Q. Yes? Is that all that was said on that occasion?

A. No. There was more said.

Q. Did you make any request of Mr. Paul Ziegler?

A. No, no request. No, we asked him about the sugar. [225] He said he had sold no sugar.

Mr. Carr: Well, now, just a moment, your Honor. I am going to move to strike this whole conversation up

(Testimony of Stephen D. Ramseur)

to now on the ground that it has no bearing on any of the issues in this case.

The Court: That is correct so far. Let us get into the next question now.

Q. By Mr. Strong: What were you doing then on that occasion?

A. We went there—Mr. Tingle and I went there to see if someone would sign the acknowledgment of the request, acknowledging the receipt of the demand letter.

Q. Were you investigating something?

Mr. Carr: That is objected to, your Honor. Why bring in another matter?

Mr. Strong: This is not another matter, your Honor. This is the same transaction. If counsel would let me ask a few more questions, I should like to bring it out. It is subject to be stricken.

The Court: If you can connect it up, I shall permit it. But the court takes the view of counsel for the defendants at this point, if it is not connected up.

Mr. Carr: I am going to forewarn Mr. Strong if he brings in some damaging thing, what the consequences are on this. [226]

Mr. Strong: I shall accept your Honor's ruling.

The Court: All right, proceed.

Q. By Mr. Strong: Do you have a copy of the demand letter? A. No, I have not.

Q. Is it in your files?

A. The files is in San Francisco.

Q. Did you have any discussion with Paul Ziegler about any sugar? A. I did, yes.

(Testimony of Stephen D. Ramseur)

Q. What sugar did you discuss with him?

A. Sugar that he had obtained.

Mr. Carr: I move to strike that as a conclusion of the witness.

The Court: Yes. Now, you say sugar that he had obtained. You see, that is a conclusion of yours.

What did Paul Ziegler say? What did you ask him, and what did he say?

The Witness: We asked him what disposition was made of the sugar that he had, and he said, "You want to know what happened to the sugar?" He said, "We used it in manufacturing a number of products."

The Court: What sugar. Was there any identification of it?

The Witness: No, not at that time. There was nothing [227] said about what sugar. We went there to serve the demand letter and get it signed, and he said that he would not sign it; that if we would leave the syrup out—this demand letter called for a return of sales of sugar and syrup. He said if we left the syrup out, there would be no need of making a demand letter, filling the demand letter out, the requirements of it, as they sold no sugar. It was all used in the manufacture of product there in the plant.

Q. By Mr. Strong: Is that all that was said on that occasion?

A. Just about all, yes.

Mr. Strong: I will agree to strike this witness's testimony, your Honor.

The Court: Yes, it is not competent. It may go out.

Mr. Strong: I agree to have the jury instructed to completely disregard anything he said.

The Court: The jury is instructed to completely disregard anything this witness has said.

That is all.

(Witness excused.)

Mr. Strong: Mr. Tingle. May I speak to the next witness a moment, your Honor?

The Court: Yes, certainly.

Mr. Strong: Because I don't want to burden the jury or the court if it is not necessary. [228]

(Brief pause in the proceedings.)

BENJAMIN H. TINGLE,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Benjamin H. Tingle.

The Clerk: T-i-n-g-l-e?

The Witness: T-i-n-g-l-e.

Direct Examination.

By Mr. Strong:

Q. What is your occupation?

A. Investigator, Alcohol Tax Unit.

Q. Did you hold that job during 1946?

A. Yes.

Q. Now, in November, 1946, did you have occasion to go to the premises of the West Coast Supply Company?

A. I did.

Q. Did you go alone?                      A. No, sir.

Q. With whom did you go?

A. I went with Mr. Ramseur and Awrey, investigators.

(Testimony of Benjamin H. Tingle)

Q. Who?

A. Ramseur and Awrey, A-w-r-e-y. [229]

Q. Were you there investigating anything in connection with the Alcohol Tax Unit?

A. Well, we went there on November the 14th to serve what we call a demand letter upon him under Regulation 17 to report sales of sugar.

Q. What sugar?

A. Well, sugar that he had obtained, what we had learned about that he had obtained through the OPA by issuance of checks.

Mr. Carr: I object to that and move it be stricken as purely hearsay.

The Court: It is hearsay. It may go out.

Q. By Mr. Strong: Did you receive any communications from the OPA?

A. Well, only verbally, I believe. We talked with the investigators at the OPA about the matter, yes.

Q. Did you return there on November 21, 1946?

A. Yes, sir.

Q. Did you have any discussion with Paul J. Ziegler?

A. Yes, sir.

Q. Will you state what you said and what he said?

A. Well, we went there to get him to have his brother sign a receipted copy of Regulation 17 letter which we had served upon him a week before. We had served the demand letter upon his brother, Allan; and they had refused to sign [240] the receipted copies of the demand letter. And that was why we returned there the second time, to see if we could get him to sign this letter.

(Testimony of Benjamin H. Tingle)

Q. Do you have a copy of the letter with you?

A. No, I do not.

Q. Do you know where it is?

A. Yes, sir. It is in our files in the Alcohol Tax Unit.

Q. In Los Angeles?

A. In Los Angeles, yes sir.

Mr. Strong: It may save time, your Honor, if this witness is excused to get the letter. I was under the impression that these witnesses would have the letter here.

The Court: All right.

Mr. Strong: Would you do that?

The Witness: Yes.

(Witness temporarily excused.)

Mr. Strong: Mr. Lofton.

### FRITZ LOFTON,

called as a witness by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Fritz Lofton, L-o-f-t-o-n. [231]

### Direct Examination.

By Mr. Strong:

Q. What is your occupation, Mr. Lofton?

A. I work for the Office of Price Administration.

Q. In what capacity?

A. I have charge of the wholesale-retail department.

Q. Wholesale-retail department?

A. That is right.



(Testimony of Fritz Lofton)

Q. Would you explain that more fully?

A. Well, we determine the allowable inventories of wholesalers and retailers and the adjustments.

Q. As to what?

A. As to their allowable inventories of sugar.

Q. I see. You have charge of the records?

A. I do.

Q. With reference to that?                   A. I do.

Q. I show you Government's Exhibit 10 for identification, which consists of various documents, and ask you whether these are part of the records which are under your care and custody?

A. No, sir, those are not.

Q. What records are those?                   A. Those are—

The Court: What is the exhibit number?

Mr. Strong: Government's Exhibit 10 for identification. [232]

The Witness: Those are the industrial section.

Q. By Mr. Strong: Will you look through it and see if any of them are wholesale?

A. No, sir, they are not.

Mr. Strong: No further questions.

The Court: That is all.

Mr. Carr: That is all.

(Witness excused.)

Mr. Strong: Mr. Garver.

## JOHN W. GARVER,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: John W. Garver, G-a-r-v-e-r.

## Direct Examination.

By Mr. Strong:

Q. What is your occupation, Mr. Garver?

A. Los Angeles industrial sugar rationing specialist.

Q. With what agency?

A. Office of Temporary Controls.

Q. Were you during 1946 employed by the Office of Price Administration?      A. I was. [233]

Q. What was your job then?

A. I was the specialist for the wholesale and retail section. I beg your pardon. 1946?

Q. That's right.

A. February 1st I took over the industrial section.

Q. Would you look at the documents in front of you, which are Government's Exhibit 10 for identification, and state whether any of those documents are part of the files of the Office of Price Administration industrial section?

A. Yes, they are. They are all provisional allowance reports and—

Q. Do not describe them. Just answer it yes or no.

A. Yes. Yes, they are.

Q. All or just some?      A. All of them.

Q. Are they part of the official files under your custody?      A. They are.

Q. And were they received and used in the due course of business of the Office of Price Administration under your charge?      A. They were, yes.

(Testimony of John W. Garver)

Mr. Strong: I offer these documents in evidence, your Honor, Government's Exhibit 10 for identification. And I show them to counsel. [234]

Mr. Carr: May I inquire for what purpose you are offering them?

Mr. Strong: The same purpose: in support of the eight counts of the information to show willfulness, to show the relationship of this defendant to the company, and to show the use of the OPA ration account.

Mr. Carr: I object to this upon the following grounds: as immaterial; and has no bearing on any of the issues in the case. It does not establish any partnership relation. It is inadmissible for that purpose.

It all relates to transactions prior to the date of the charges involved in this information. It raises collateral matters which can only work to the prejudice of the two defendants.

The Court: I shall hear from the Government.

Mr. Strong: The documents are all in the latter part of 1945, I believe. Some of those documents, as to which I may say parenthetically I believe there was a stipulation on the signature of Paul J. Ziegler. Some of those documents indicate that they were filed by Mr. Paul J. Ziegler and with the word "partner—West Coast Supply Company." And some of them are on the letterhead of the West Coast Supply Company.

Mr. Carr: I didn't understand you to say I stipulated to that, did I?

The Court: You stipulated as to the signature. [235]

Mr. Carr: That is true. That still stands. And as far as the admissibility just only for the signature, your

(Testimony of John W. Garver)

Honor, I am not objecting, except on the general ground that I have stated.

However, the material in the document is what I am directing my attention to.

Mr. Strong: If I may continue, your Honor, that material constitutes proper evidence to indicate the relationship between the defendant, Paul J. Ziegler, and the West Coast Supply Company.

The Court: Mr. Reporter, will you read the purpose for which these documents are offered?

(Record read by the reporter.)

The Court: Where do they show willfulness? Which part shows willfulness?

Mr. Strong: I think that the fact that the person whose signature appears on those documents has been engaged in transactions with the Office of Price Administration, as shown by those documents, in itself has a tendency of establishing the fact that he knows what the regulations are about; that he knows how the operations are conducted and that he knows something about the rules and regulations governing rationing.

That, I think, is evidence which tends to show, in the ultimate sense to some degree, the presence of willfulness, knowledge of regulations, specific knowledge, the exercise [236] of various permitted functions before an agency, as to whose regulations are involved.

I think all those tend to indicate that the person knows something about those matters which are in support of willfulness.

The Court: They may be admissible if certain testimony developed, which I shall not indicate at this time.

(Testimony of John W. Garver)

However, I am going to sustain the objection at this time. It might be used in rebuttal if certain testimony developed.

Mr. Strong: Does that also apply to the offer to show the relationship between the defendant, Paul J. Ziegler, and the company?

The Court: I would only admit them as binding at this time, with the testimony in the condition that it is in now, if I admitted them at all, against Paul J. Ziegler.

I am not admitting them against Paul J. Ziegler at this time.

Mr. Strong: Well, if your Honor please, I had thought that those two witnesses were going to take more time than they did.

If we can recess at this time, I can assure your Honor that we will finish with the case by 12:00 o'clock tomorrow. That will give me an opportunity to go over some of the matters.

The Court: About how long, Mr. Carr, do you anticipate you will take? [237]

Mr. Carr: Well, your Honor, I don't want to impose upon your good patience; but I want to ask for considerable time at the end of the Government's case to present a matter which I cannot present, I do not think, under two to three hours.

I am going to cover a great deal of law, a great many citations, both statutory and constitutional law. And I would expect to take a minimum of three hours, your Honor.

Then I think we will be in defense of the case, I should say, not to exceed a day, anyway, maybe less.

(Testimony of John W. Garver)

The Court: I am sure you can, your legal argument in less time than that, Mr. Carr. I have never had a legal argument in 30 years that was that long. Of course, I am always ready to have something new.

Mr. Carr: Your Honor, there are certain constitutional questions involved. It means we have got to go into the Reconversion Act. We have got to go into two constitutional questions, partnership questions; and I have a lot of law briefed, your Honor.

The Court: I have been through a great many constitutional questions, Mr. Carr; so I can save you a lot of time on that.

But I want you to outline it to me, and I want you to give me your position so I will have it clearly in mind. I might ask for additional argument, but I say again in my entire experience I have never had three-hour argument on the law. [238]

Mr. Carr: I don't want to impose on your Honor, but I want to give myself ample time.

I will tell you I have spent about, all told, three weeks on the law in this case; and it is unusual for me to have to spend three weeks looking up the law. It will take three hours to—

The Court: That will be an entire afternoon session, and a forenoon session, for one man arguing the law.

Mr. Carr: Yes, your Honor. It will take three hours to present what I dug up in three weeks.

The Court: I may not be familiar with all the law, but I do not believe I will require a whole day's argument of the law.



Ladies and gentlemen of the jury, you will remember the admonition I have heretofore given you. You will not discuss the matter among yourselves. You will not permit anyone to discuss this matter in your presence, and you will not form or express any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court.

We will now take a recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:05 o'clock p. m., an adjournment was taken until 10:00 o'clock a. m., February 6, 1947.) [239]

Los Angeles, California, February 6, 1947, 10:00 A. M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 19,106 Criminal, United States v. West Coast Supply Company, a partnership, and Paul J. Ziegler, for further jury trial.

Mr. Strong: Ready for the Government.

Mr. Carr: Ready for the defense.

The Court: Stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulate.

The Court: Stipulate the defendant is in court?

Mr. Carr: So stipulated.

Mr. Strong: So stipulate. Your Honor, I don't know that I have shown these three exhibits—three, four and five—to the jury. May I do so?

The Court: Yes.

(Counsel passes documents to the jury.)

Mr. Strong: I have no further questions of this witness. (Referring to the witness John W. Garver.)

Mr. Carr: Your Honor, there are some papers that they getting. It might be we could recall this witness and save time.

The Court: All right.

Mr. Carr: Mr. Strong is getting them somewhere upstairs, I think. [240]

Mr. Strong: Yes, that is satisfactory, your Honor.

Mr. Hartt. May I recall the witness Hartt for two questions, your Honor?

The Court: You may.

RICHARD C. HARTT,

a witness called by the Government, having been previously sworn, was recalled and testified further as follows:

Direct Examination (Resumed.)

By Mr. Strong:

Q. Are you the Mr. Hartt who testified previously in this trial? A. I am.

Q. You are the gentleman from the Union Bank and Trust Company? A. Yes, sir.

Q. Mr. Hartt, I want to show you Exhibit 1, which consists of the ledger cards. Before the last two figures there is a period in each instance.

I should like you to state what the figures indicate as to poundage?

Mr. Carr: Well, I submit the figures speak for themselves.

Mr. Strong: There was some confusion, your Honor.

The Court: Do you know what they stand for? [241]

Mr. Carr: I think I do, your Honor.

The Court: Will you state it to the court? That will clear it up. It was not clear to my mind. I read them yesterday.

(Testimony of Richard C. Hartt)

Mr. Carr: They refer to the number of pounds; that's all. They are just simple figures.

The Court: May I have it?

(Witness hands document to the court.)

The Court: Well, here is an item of July 25, 1946: "6,000.00."

So that is 6,000?

Mr. Carr: May I see it, your Honor?

The Court: Hand it to Mr. Carr, please.

(Document handed to counsel.)

The Court: That is 6,000, is that correct?

Mr. Carr: 600,000 pounds of sugar.

The Court: Well, it says 6,000.

Mr. Strong: Your Honor, if counsel will stipulate that the figures could be read without any periods in them—

Mr. Carr: I will.

Mr. Strong: —then there will be no question. So that figure will then read, instead of "6,000.00", it will read "600,000."

The Court: Yes. Yesterday, gentlemen, when I noticed it I could not change it and I could not interpret it. [242]

It ought to be interpreted for the jury. I read it as 6,000 pounds, and that is what it shows on that basis.

Mr. Carr: We don't raise any question about it, your Honor. The decimal is to be ignored, I think.

The Court: All right.

Mr. Strong: That is all.

(Witness excused.)

Mr. Strong: Mr. Russell.

(Testimony of Richard C. Hartt)

Mr. Carr: Before that witness leaves, he was to find an extra signature card. And I wonder if he did it, your Honor?

The Court: Yes. Take the stand, please.

RICHARD C. HARTT,

a witness called by the Government, having been previously sworn, was recalled and testified further as follows:

Cross Examination.

By Mr. Carr:

Q. Did you find the other signature card?

A. I haven't finished the investigation as yet.

Mr. Carr: I guess that is all, then.

The Court: When will you—

The Witness: I will make sure that it is through today.

The Court: Do you feel you can finish it by 2:00 o'clock?

The Witness: I could have it by 2:00 o'clock. [243]

The Court: All right, thank you.

Mr. Carr: Just one other question:

Q. I might ask you, this Exhibit No. 2, Government's Exhibit in evidence, and this signature card is dated March 17, 1943.

From your recollection, don't you recall that there was a signature card previous to that time?

A. Not to my recollection.

Mr. Carr: Well, then, you continue your search, if you please, sir.

The Court: He says he will have it at 2:00 o'clock, Mr. Carr.

(Testimony of Richard C. Hartt)

All right, that is all.

Mr. Strong: I have a question.

The Court: All right.

Redirect Examination.

By Mr. Strong:

Q. Have you found any signature card subsequent to that time? A. No, sir.

Mr. Strong: That is all.

(Witness excused.)

Mr. Strong: Mr. Russell. [244]

ROBERT A. RUSSELL,

a witness called by the Government, being first duly sworn,  
was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Robert A. Russell.

The Clerk: "A"?

The Witness: Robert A. Russell.

Direct Examination.

By Mr. Strong:

Q. Mr. Russell, were you ever employed at the West Coast Supply Company?

A. I am employed at the West Coast Supply Company now.

Q. How long have you been employed there?

A. One month.

Q. Were you employed at any time before that at the address 1654 Long Beach Avenue?

A. I worked for the John H. Ziegler Company before the first of the year.

(Testimony of Robert A. Russell)

Q. Will you speak up?

A. I worked for the John H. Ziegler Company before the first of the year.

Q. Who employed you when you worked there?

A. Mr. Paul Ziegler.

Q. And when was that? [245]

A. Approximately nine months ago.

Q. You say you worked for the West Coast Supply Company for the last month?

A. The last month, yes, sir.

Q. Who employed you at the West Coast Supply Company?      A. Mr. Raymond Ziegler.

Q. Will you state what happened; how you transferred from one job to the other?

A. Well, I left the John H. Ziegler Company to go to work for the West Coast Supply Company as a salesman.

Q. Tell us what happened. Were you asked to do that? Or how did you happen to do it?

A. Well, I—

Mr. Carr: I submit that is wholly immaterial.

The Court: Is it material?

Mr. Strong: I think it is, your Honor. I am laying the foundation.

The Court: You are asking him now about his employment of a month ago, and that would have nothing to do with the charge in the information.

It is just a month ago that he commenced to work for the West Coast Supply Company.

Mr. Strong: I shall leave those questions at this time and ask some more later.

The Court: All right. [246]



(Testimony of Robert A. Russell)

Q. By Mr. Strong: I show you Government's Exhibit 15-A. The first document is a warehouse delivery advice, No. 31450, and ask you if that is your signature on there? A. That is my signature.

Q. And are those words "West Coast Supply Co." yours? A. Yes, sir.

Q. You wrote that on this? A. Yes, sir.

Q. Was that written on or about the date shown here: July 1st or 2nd, 1946?

A. Well, I couldn't say that.

Q. You just examine it and see if you can.

Q. That is the date on the receipt; so that is undoubtedly the time that I signed it.

Q. Did you receive the sugar that was shown there by that receipt? A. I undoubtedly did, yes.

Q. And that was at 1654 Long Beach Avenue?

A. Well, 1654—no, I wouldn't say it was 1654.

Q. Where did you receive it?

A. Well, I received it in the John H. Ziegler Company in the entrance to that warehouse.

Q. Where is that?

A. That would be on the north side of the West Coast Supply Company. [247]

Q. Part of the same building?

A. Well, it is in the same vicinity, yes.

Q. Well, isn't it an attached building?

A. Well, it is on the same lot, I mean more or less. There are several different properties there. I don't know whether you would call it the same building or not.

Q. Are they physically connected?

A. Physically connected, yes.

(Testimony of Robert A. Russell)

Q. Where is the office of the West Coast Supply Company? In which building is that?

A. 1654 Long Beach Avenue.

Q. Where is the office of this so-called John H. Ziegler Company?

Mr. Carr: I object to this.

The Court: "So-called"?

Mr. Carr: To "so-called."

The Court: I do not think that is proper.

Mr. Strong: I will take out "so-called."

Q. Where is the office of the John H. Ziegler Company?

A. Well, that is approximately—I would have to say approximately because I don't know the exact address. I would say it is about 57 or 59.

Q. Is there an office in there? A. Yes, sir.

Q. When you received the sugar shown by Government's [248] Exhibit 15-A, you were working for what company, you say? A. John H. Ziegler Company.

Q. How did you happen to write "West Coast Supply Co." on that receipt?

Mr. Carr: I submit he is calling this man as his own witness and cross examining him.

The Court: No, he is just asking him to explain an exhibit, counsel.

Mr. Carr: Very well.

The Court: Oh, no.

The Witness: When you receive something from any company, you sign as to the company it's made out to. The receipt reads "sold to West Coast Supply Co.," so that is naturally the way the truck driver would want it signed.

(Testimony of Robert A. Russell)

Q. By Mr. Strong: That is the way you signed it?

A. That is the way I signed it because that is the way the receipt was made out.

Q. So far as you know, who are the owners of the West Coast Supply Company?

A. Well, to my knowledge, Raymond Ziegler and Allan Ziegler and, I believe, their father.

Q. Who are the owners of the John H. Ziegler Company?

A. Well, to my knowledge, the only one I have ever had contact with is Mr. Paul Ziegler.

Q. Mr. Paul Ziegler? [249]

A. What did you ask me, sir?

Q. Who the owner was of the John H. Ziegler Company?

A. Well, Mr. Ziegler. Mr. Paul Ziegler is the only one I have had contact with. I don't know what the personal relationship is there, sir.

Q. Yes. Do you know whether Mr. Paul Ziegler is the brother of the other Zieglers that you mentioned?

A. So far as I know.

Q. So far as you know it is what?

A. That he is a brother, I imagine. They have the same name.

Q. I show you Government's Exhibit 17 in evidence. You see on the first sheet it says here "West Coast Supply Co.—per Robert A. Russell." A. I see that.

Q. Did you write that on there?

A. That is my signature.

Q. How about the words "West Coast Supply Co."?

A. That is my writing.

(Testimony of Robert A. Russell)

Q. You wrote that about the date shown on the receipt?

A. Well, that is the date there. I imagine that is when I wrote it.

Q. Yes. August 20, 1946?

A. August 20, 1946.

Q. That is the time you received that sugar? [250]

A. I imagine it was around that date. I mean I can't recall the exact date when I received it.

Q. And look at this third page of Government's Exhibit 17, which is a delivery record of the Marr Freight Transit, Inc., No. 3920.

Do you see the words "West Coast Supply Co. by Robert A. Russell"? Did you write that on there?

A. That is my signature.

Q. Yes. How about the words "West Coast Supply Co."? A. That is my writing.

Q. And you received the sugar on or about the date shown on the receipt?

A. I imagine. I mean I am not sure about dates because, I mean, over that period of time—

Q. But you received that sugar?

A. I undoubtedly did, yes.

Q. You would not sign it if you did not?

A. No, I wouldn't sign.

Q. I show you the next exhibit, which is Government's Exhibit 17, which is the record of Marr Freight Transit, Inc., No. 3926, and ask you whether you wrote the words "West Coast Supply Co. by Robert A. Russell"?

A. How is that?

Q. These words (indicating).

A. You mean that is my signature there? Yes. [251]

(Testimony of Robert A. Russell)

Q. And above it you wrote "West Coast Supply Co."?

A. Yes.

Q. And you got that sugar on about the date shown on the receipt?

A. If that is on the receipt, I imagine I did. I mean I can't recall, I mean what I received at that time.

Q. Do you sign receipts without getting the items shown? A. No.

The Court: He answered that, and he said undoubtedly he would not sign unless he got the sugar.

Q. By Mr. Strong: I show you as part of Government's Exhibit 17 the delivery record of the Marr Freight Transit, Inc., No. 3937. That has the words "West Coast Supply Co. by Robert A. Russell" on the bottom.

Did you write those words?

A. Well, that is my signature and that is my writing.

Q. The words "West Coast Supply Co."?

A. That is my writing.

Q. You received this sugar, too?

A. Well, I undoubtedly did. I mean—

Q. I show you the next part of Government's Exhibit 17 which is the delivery record of Marr Freight Transit, Inc., No. 3683, signed "West Coast Supply Co. by Robert A. Russell." A. That is my signature.

Q. And "West Coast Supply Co." you wrote? [252]

A. That is my writing.

Q. The next receipt, part of Government's Exhibit 17, is delivery record No. 3691 of Marr Freight Transit, Inc. Did you write the words "West Coast Supply Co. by Robert A. Russell" on the right-hand corner?

A. That is my writing.

Q. You got the sugar? A. I imagine.

(Testimony of Robert A. Russell)

Q. I show you as part of Government's Exhibit 17 delivery record No. 3601 of Marr Freight Transit, Inc.

On the right-hand side it says in writing "West Coast Supply Co. by Robert A. Russell."

Did you write that?           A. That is my writing.

Q. I show you—

Mr. Carr: Louder, please, Mr. Witness.

Mr. Strong: Beg pardon?

Mr. Carr: A little louder.

Mr. Strong: Would you speak up a little louder?

The Witness: That is my writing.

Q. By Mr. Strong: I show you the next three pages of Government's Exhibit 17, each of which there is in the right-hand side the words "West Coast Supply Co." written in "by Robert A. Russell."

Now, will you state whether you wrote all those three?  
[253]           A. This one isn't very clear.

Q. Well, examine it.

A. That looks like my writing. I can't tell about that one. I am not sure.

Q. Just look at it a little more carefully.

A. It looks like my name, but I mean I couldn't say for sure on the "West Coast Supply Co."

Q. But the name looks like your name?

A. The name looks like mine.

Q. All right. I show you Government's Exhibit 20, which consists of two shipping orders and freight bills, both of which have on them the words "West Coast Supply Co. by Robert A. Russell."

You see it is on the left-hand side on the first one, which is "No. P-177" printed, and the next order is



(Testimony of Robert A. Russell)

"P-125". And on the right-hand side it says "West Coast Supply Co. by Robert A. Russell."

Did you sign those? A. That is my writing.

Q. Both the "West Coast Supply Co." and the name?

A. Yes, sir.

Q. I assume you received that sugar shown by these receipts? A. I received it if I signed for it.

Q. I show you Government's Exhibit 19 in evidence, [254] which consists of two freight bills of the Valencia Truck Co., each of which has in the right-hand side under "Received . . ." in pencil the words "West Coast Supply Co. by Robert A. Russell."

Did you write that in both instances?

A. That is my writing.

Q. I show you Government's Exhibit 14 in evidence, and I show you the delivery receipt which is No. R-02917. It says "West Coast Supply Co. by Robert A. Russell."

Did you write that? A. That is my writing.

Mr. Carr: Mr. Strong, it would be all right if you just let him look at all of them and make a statement. It will save time.

Mr. Strong: Fine!

The Witness: This second one isn't mine.

Q. By Mr. Strong: That is delivery receipt of Union Terminal Warehouse No. R-04877.

You don't know who wrote that?

A. No. That isn't mine.

Q. All right. Go ahead.

A. There are only three here that are mine. The rest are not.

Q. Will you indicate which three, please?

A. That one there is my writing. [255]

(Testimony of Robert A. Russell)

Q. That is delivery receipt No. R-02917, is that right?

A. Yes. That is not mine (indicating).

Q. That is delivery receipt R-04877.

You don't know whose writing that is?

A. No. That is not ours.

Q. That is not yours, you mean?

A. I mean it is not mine.

Q. Delivery receipt No. R-02812: is that your writing?  
A. That is my writing.

Q. Delivery receipt No. S-01651?

A. That is my writing. That is not, I mean there (indicating).

Q. Delivery receipt R-02916 has not any of your writing?  
A. No.

Q. Delivery receipt S-00743 is your writing?

A. That is my writing.

Q. Is that right? A. Yes.

Mr. Strong: That is all.

The Court: Just a minute.

Mr. Strong: One more question. May I ask one more question?

Q. In connection with the sugar which is shown by the receipts on which you say appears your writing, when that sugar was received by you did you give to the driver any ration [256] coupons or ration checks or any ration currency of any kind?

A. That wasn't—I mean I was just the receiving clerk, sir.

Q. I just want to know whether you did or you did not.

A. No, I wouldn't handle anything like that.

Mr. Strong: That is all. Cross examine.

(Testimony of Robert A. Russell)

Cross Examination.

By Mr. Carr:

Q. Mr. Russell, directing your attention to Exhibit No. 17, I notice all of these you say you received.

Well, the first one says "received from Overland Terminal Warehouse" and up at the top it is "Marr Freight Line."

Are you familiar enough with the business to know that this sugar had been stored there at the Overland Terminal Warehouse?

A. You mean where it was stored there, sir?

Q. Yes, where the two companies have storage? They use that company, don't they, the Overland Terminal Warehouse?

A. The Overland Terminal Warehouse is a storage warehouse, to my knowledge.

The Court: Sir?

The Witness: The Overland Terminal Warehouse is a storage warehouse, to by knowledge.

Q. By Mr. Carr: So that both the John H. Ziegler Company [257] and the West Coast Supply Company stored various and sundry articles at that terminal?

A. I believe so, sir.

Mr. Strong: I object to that, your Honor, unless he knows.

The Court: Lay a foundation, Mr. Carr.

The Witness: I mean—

The Court: Wait a minute.

The Witness: Pardon me, sir.

The Court: Lay a foundation, Mr. Carr.

Mr. Carr: Well, I won't waste the time if counsel wants to be that technical.

(Testimony of Robert A. Russell)

Mr. Strong: I don't want to be technical; but if the man knows, I should like to know if he does.

The Court: Mr. Carr says he does not want to waste the time of the court.

Mr. Carr: I think the exhibit probably speaks for itself.

The Court: I think so. All right.

Q. By Mr. Carr: Now, Mr. Russell, when did you first start to work for the John H. Ziegler Company?

A. I believe it was April of last year, sir.

Q. A. April of 1946?

A. I mean it was approximately around there. It might have been March. It was either the end of March or right around the first of April, right in that vicinity there.

Q. The John H. Ziegler Company is run or operated there by Mr. Paul Ziegler, is it not? [258]

Q. He is the one in charge and the one you took orders from, is that right? A. Yes, sir.

Q. Now, when you were working for the John H. Ziegler Company you had business with the West Coast Supply Company, did you not? A. Yes, sir.

Q. Were you around the office of the West Coast Supply Company?

A. If I was just in that vicinity, sir, I mean if I happened to walk in the office.

Q. There are two offices there, are there not?

A. Yes, sir.

Q. One is the West Coast Supply Company?

A. Yes, sir.

Q. And the other is the John H. Ziegler Company office? A. Yes, sir.

(Testimony of Robert A. Russell)

Q. There is a large building, maybe two or three buildings on that property, is that right?

A. Yes, sir.

Q. And there is a manufacturing establishment?

A. Yes, sir.

Q. That is run by the John H. Ziegler Company, is it not?

A. Yes, sir.

Q. Or was at that time? [259]

A. It was, I mean when I worked there, sir.

Q. Now, I believe there is Raymond and Allan Ziegler who are the partners of the West Coast Supply Company?

A. Yes, sir.

Q. And Allan is the managing partner?

A. I believe so, sir.

Q. From your own knowledge don't you know, Mr. Witness, that they are two separate companies?

A. Yes, sir.

Mr. Strong: I object to that, your Honor.

The Court: No, you opened the question. He has the right to go into it.

Mr. Strong: May I have the witness qualified further? I don't know that he is competent to say.

Mr. Carr: I submit, your Honor, I am cross examining him.

The Court: That is right. You have that right, and you may go into that on further examination.

Mr. Carr: I think that is all.

Redirect Examination.

By Mr. Strong:

Q. How do you know that they are two separate companies?

(Testimony of Robert A. Russell)

A. Well, only from the knowledge, sir, that I have worked for both.

Q. But you don't know what their internal arrangements are, do you? [260]

A. Well, I don't quite understand that, sir.

Q. You are not working in the office, are you?

A. No, sir. At the present time I am a salesman for the West Coast Supply Company.

Q. Before that you were working there?

A. For the John H. Ziegler Company.

Q. What were your duties?

A. What were my duties for the John H. Ziegler Company?

Q. Yes.

A. I was receiving clerk, and I was assistant to the superintendent.

Q. You don't know what arrangements there are between the various partners and other persons, do you?

A. Well, only from my knowledge, sir. I mean I had nothing to do with the West Coast Supply Company when I was working for the John H. Ziegler Company.

Q. But you don't know what arrangements there are between the partners, do you?

A. Well, I mean that is more or less personal, sir. I don't know what the—

Q. By the way, do you have a social security card?

A. I don't believe I have it with me, sir. But I have one.



(Testimony of Robert A. Russell)

Q. Do you have it with you?

A. No, sir. [261]

Q. Would you bring it back this afternoon?

A. All right, sir.

Q. For the year 1946, please.

Mr. Carr: I submit that bringing this man back for a social security card—what is the purpose of asking for the social security card?

Mr. Strong: I don't believe I have to state to counsel what my purposes are, your Honor. These are my witnesses, and I can conduct the trial in my own way.

Mr. Carr: There is a business down there, your Honor; and this business of dragging people back and forth is quite a nuisance.

The Court: I think this is the only request the Government has made.

Mr. Carr: Very well.

The Court: You have made several, and I have granted them all. Proceed.

Mr. Strong: That is all.

The Witness: Is that all?

Mr. Strong: Bring back the card this afternoon.

The Witness: All right, sir.

(Witness excused.)

Mr. Strong: Mr. Young. [262]

## LOMAX YOUNG,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Lomax, L-o-m-a-x, Young, Y-o-u-n-g.

The Court: I am sure that we do not have that name.

The Clerk: L-o-m-a-x, the first name.

The Court: And the last name?

The Clerk: Y-o-u-n-g.

## Direct Examination.

By Mr. Strong:

Q. What is your occupation, Mr. Young?

A. I am an investigator.

Q. For whom?

A. The Office of Price Administration.

Q. How long have you had that job?

A. Since the middle of May, 1945.

Q. Were you an investigator with the Office of Price Administration in July and August, 1946?

A. Yes, sir.

Q. Did you have occasion at any time during July or August, 1946, to go to the premises at 16- —

Mr. Carr: -54.

Mr. Strong: Thank you, sir. [263]

Q. —1654 Long Beach Avenue?

A. Yes, sir.

Q. Did you go there on official business in connection with the Office of Price Administration?

A. Yes, sir.

Q. Were you alone?                      A. No, sir.

(Testimony of Lomax Young)

Q. About what date was it that you went?

A. As near as I can recall, it was, I think, around August the 22nd.

Q. Of what year?           A. Of 1946.

Q. Who was with you?

A. Special Agent Pruitt, two accountants from the auditing department, one by the name of Penrod, and I don't recall the other auditor's name.

Q. Speak up, please. I heard that, but speak up from now on.

Who else?

A. Special Agent Gould.

Q. Did you arrive on those premises during business hours?           A. Yes, sir.

Q. Did you ask for anyone there?

A. Yes, sir. I asked for Allan Ziegler and Raymond [264] Ziegler the first time.

Q. Did anyone come forth?

A. Yes, sir, Allan Ziegler—both Allan Ziegler and Raymond Ziegler.

Q. Did you make any request upon either or both Allan and Raymond Ziegler.

A. I had an official document of the Office of Price Administration which my supervisor requested.

The Court: Not what your supervisor requested.

Q. By Mr. Strong: Did you have a document?

A. Yes, sir.

Q. What did you do with it?

A. I served one on Allan Ziegler and one on Raymond Ziegler.

(Testimony of Lomax Young)

Q. What do you mean "served"?

A. I presented it to him.

Q. I see. Did you make any request upon Allan or Raymond Ziegler?

Mr. Carr: That is all objected to as being wholly immaterial, not binding on either of these two defendants, your Honor.

Mr. Strong: I shall connect it up.

The Court: All right, proceed.

The Witness: As I recall, the document—

The Court: No. Listen to the question. [265]

(Question read by the reporter.)

The Witness: Yes, sir.

Q. By Mr. Strong: Was that orally or by means of the document? A. By means of the document.

Mr. Strong: May I have this marked for identification as Government's Exhibit next in number? It consists of three sheets.

The Clerk: Government's Exhibit 37 for identification.

Mr. Strong: Make that one sheet, your Honor.

The Court: 37.

Have you shown it to counsel?

Mr. Strong: I am going to show it to him right now.  
(Handing document to counsel.)

Mr. Carr: All right.

Q. By Mr. Strong: I show you Government's Exhibit 37 for identification and ask you whether this is the document to which you referred?

Mr. Carr: Now, if the court please, at this time I am going to ask your Honor to read that document.

(Testimony of Lomax Young)

The Court: Not just yet. He is just getting it identified. If the witness should say no—

Mr. Carr: Very well, your Honor.

The Court: —there would be no objection.

Just answer that yes or no. [266]

The Witness: Yes.

The Court: The next question?

Mr. Carr: Now, your Honor—

The Court: Wait until the next question.

Q. By Mr. Strong: Did you have any conversation with either Paul or Raymond Ziegler in connection with that document? A. Yes.

Mr. Carr: I object to that as being wholly immaterial and not binding on the defendants in this case. It is leading toward prejudicial matter.

Mr. Strong: I will connect it up.

The Court: Let me see it. (Document handed to the court.)

Mr. Strong: I may say, your Honor, that I do not intend to offer the document. This is only a foundation for the next question.

The Court: What is the question?

(Question read by the reporter.)

Q. By Mr. Strong: During this conversation did either Paul or Raymond Ziegler state to you, rather did either Allan or Raymond Ziegler state to you the capacity of Paul Ziegler?

Mr. Carr: Now, just a moment. We have mixed the three names up there, your Honor. He has used Paul; he has used Allan and he has used Raymond. [267]

I submit it is not fair to this defendant to have those names used.

(Testimony of Lomax Young)

The Court: Strike out the question and reframe the question.

Q. By Mr. Strong: During this conversation with either Allan or Raymond Ziegler did either or both of them make any statement as to the capacity of the defendant Paul Ziegler? A. Yes, sir.

Q. Will you state who said what? Just what was said about Paul, nothing else, no other details?

A. Allan Ziegler said that Paul Ziegler was the one who knew the most about the records requested in the document and that he would not show it, or would prefer not to comply with the request in the document except in the presence of Paul because, as I say, Paul was the one that I was to talk to about the document, and I asked him then if he was the manager and he said yes.

Q. Who was the manager? A. Paul.

Mr. Strong: May I have this marked for identification, your Honor?

The Court: Government's Exhibit 38 for identification.

Mr. Strong: In connection with this Government's Exhibit 38 for identification I want to state that I am not showing the witness the reverse side, and I should like to disregard it. [268]

May I physically strike it with a pencil, your Honor.  
The Court; Yes.

Q. By Mr. Strong: I show you Government's Exhibit 38 for identification and ask you whether the signature "Raymond Ziegler" was placed on this document in your presence? A. Yes.

Q. Where did this happen?

A. At the office of the West Coast Supply Company.



(Testimony of Lomax Young)

Q. On what date?                    A. On August the 22nd.

Q. At the same—                    A. 1946.

Q. At the same occasion to which you just testified?

A. Yes, sir.

Q. You saw Raymond Ziegler sign that document?

A. Yes, sir.

Q. This written material here which precedes it—1, 2, 3, 4, 5, 6—7 lines; whose handwriting is that?

A. That is my handwriting.

Q. I don't think I heard you.

A. That is my handwriting.

Q. Then you gave that to Paul Ziegler?

A. Yes.

Q. And he signed it?                    A. Yes, sir. [269]

Mr. Carr: Just a moment, your Honor. Counsel is continually confusing those two names, and the record is going to be completely out of line.

Mr. Strong: May I strike that answer?

The Court: Yes.

Q. By Mr. Strong: Did you give this to Raymond Ziegler?                    A. Yes, sir.

Q. That is the only name that is on here "Raymond Ziegler"?                    A. That is the answer I intended.

Mr. Strong: Yes. I offer this in evidence, your Honor.

The Court: In evidence.

The Clerk: Government's Exhibit 38 in evidence.

Mr. Carr: Just a moment, Mr. Clerk, please.

I object to this on the ground it is irrelevant. It is immaterial. It is not binding on the defendant Paul Zieg-

(Testimony of Lomax Young)

ler, and it is raising a collateral issue which could work to the prejudice of both the defendants. It has no bearing whatsoever on the issues in the case, your Honor.

May I pass it up?

Mr. Strong: It has this bearing, your Honor: First it identifies the signature of Raymond Ziegler.

Secondly it is a statement signed by Raymond Ziegler as to Paul Ziegler. One of the questions in this case as has been brought out is what was the capacity of Paul Ziegler. [270]

I think that that is in proof of that question.

May I also state further, your Honor, that I will agree to striking out everything above the six lines that this witness says he wrote. I don't want that in the exhibit. It will have no purpose.

The Court: What evidenciary fact has the statement that he, in substance, desired to defer the report until Paul Ziegler was present? What evidenciary value has that?

Suppose it said that until Russell was present or someone else that had the records, or even a bookkeeper, what evidenciary fact is established by that, which is the only point I see in that part of this document?

Mr. Strong: If it said anything as to Russell, I would not be offering it because Russell is not one of the partners of these entities.

However, where one of the partners makes a statement that he wants to have the defendant Paul Ziegler before he does anything in connection with the records of that partnership, I think that that has weight in determining what role the defendant Paul Ziegler plays there, regardless of the fact of whether he is technically a partner or

(Testimony of Lomax Young)

not. I don't think it makes any difference because the connection of Paul Ziegler to these checks and these various other documents that purport to be drawn for West Coast Supply Company is one of the questions here. [271]

I think that any evidence of that kind coming through a partner, which establishes or helps to establish that, is proper evidence, your Honor.

The Court: But there is nothing in the document which refers to a partnership, is there, Mr. Strong?

Mr. Strong: Nothing as to the partnership. But it does indicate that one of the partners, Raymond Ziegler—

The Court: No, it does not indicate that. It just gives a name.

Mr. Strong: Pardon?

The Court: It just gives a name. It just gives "Paul Ziegler."

Mr. Strong: We have had testimony here that one of the partners is—

The Court: I am referring to this one instrument.

Mr. Strong: This instrument is signed by Raymond Ziegler.

The Court: That is the evidence here, unless there is some dispute.

Mr. Strong: And it tends to indicate, in my mind at least, that the party who signed it, Raymond Ziegler, is acting together with Paul Ziegler in various matters relating to the business of that company.

I think evidence of that kind is evidence in proof of the fact that that company is being operated, not only by the partners, whoever they may be, but that Paul Ziegler has an [272] active participation in running it.

(Testimony of Lomax Young)

Consequently, when other checks or documents are issued by Paul Ziegler in the name of the West Coast Supply Company, that is an act of the partnership, an act of an authorized agent, one whom they recognize themselves, as that document tends to indicate.

The Court: Frankly it does not seem to have much evidenciary value, counsel.

Mr. Strong: Well, to save time, I will withdraw it.

The Court: What?

Mr. Strong: I will withdraw it just to save time.

The Court: There is one portion I am going to permit in, and that is the signature of Raymond Ziegler which the witness testified to as written in his presence.

That part of it I shall permit in the record.

Mr. Carr: We don't object to that.

I would like to ask, though, if the exhibit is going to be put in evidence.

The Court: No, it is not going to go to the jury.

Mr. Carr: Very well, your Honor.

The Court: Mr. Cross, mark that "not to go to the jury."

The Clerk: Yes, your Honor.

Mr. Carr: Just the signature is to be considered.

Don't go away, Mr. Witness. I am through. [273]

#### Cross Examination.

By Mr. Carr:

Q. Mr. Young, how long have you been an investigator?

A. Since approximately the middle of May, 1945.

Q. You have been with the OPA all of that time, have you?

A. Yes, sir.

(Testimony of Lomax Young)

Q. You went down on this particular occasion, when you went there and talked to the Zieglers, for the purpose of trying to get a statement of some kind from them, did you not?      A. Well, not necessarily.

Q. Well, you went down to get whatever evidence you could get against them? That is what you were down there for, is it not?

A. No, sir, not exactly. I was down there in connection with the OPA document.

Q. Now, is it not a fact that on the first occasion when you went down there—let's see; you had four other men with you, did you, on that first time?

A. You are referring now to the first time I went down there that I testified to?

Q. Yes, that is right.      A. Yes, sir.

Q. Is it not a fact that at that time the only person you talked to was Allan Ziegler?

A. No, sir. [274]

Q. Did you talk to two men at that time, two Zieglers?

A. As I recall, I talked to Allan Ziegler and Raymond Ziegler. This was in the forenoon of August the 22nd.

The Court: Was that August 22nd?

The Witness: Pardon?

The Court: What was the date?

The Witness: August the 22nd, the date on that document.

Q. By Mr. Carr: That morning that you were down there did you not just talk to Raymond Ziegler, Mr. Young, alone? He was the only Ziegler there, was he not?

(Testimony of Lomax Young)

A. That may have been the case. I am certain of talking to Raymond in the morning.

Q. Now, you came back that afternoon?

A. After lunch, yes, sir.

Q. At that time you talked to some other Ziegler. Now, what Ziegler did you talk to at that time?

A. I talked also to Raymond Ziegler. I believe, as I recall, I talked to Allan Ziegler; and I talked to Paul Ziegler.

Q. Is it not a fact that at that time, both in the morning and in the afternoon, that you were told by Mr. Raymond Ziegler that Paul Ziegler was an attorney and was handling their legal business?

A. No, sir, that is not true.

Q. It was not even mentioned that Paul was an attorney? [275]

A. That was mentioned.

Q. That was mentioned?

A. That is correct.

Q. You know, of course, that he was the attorney for the company at that time, did you not?

A. I had understood that he was an attorney but not for the company.

Q. Had you previous to going down there gone over the OPA records to ascertain the facts concerning the West Coast Supply Company?

A. I don't know just what you mean by ascertaining the facts.

Q. I mean did you make a preliminary check of your files prior to going down to the office of the West Coast Supply Company?

A. I had seen the files of the West Coast Supply Company prior to going down there, if that is what you mean.



(Testimony of Lomax Young)

Q. As a matter of fact, you had looked at the registration certificates of the West Coast Supply Company before you went down there that day, had you not?

A. By "registration certificates" just what documents do you mean?

Q. Well, I can give you the form numbers.

A. That will help.

Q. Well, how about R-305? [276]

A. Yes, sir, I had seen that.

Q. You had seen R-210?

A. That I couldn't be sure of.

Q. Well, you knew at the time you went down there that the certificate showed that the West Coast Supply Company had three partners, did you not?

A. I knew that the form R-305 so indicated.

Q. You knew that it showed that Paul Ziegler was not a partner, did you not?

A. No, sir. That R-305, I believe, was dated April 28, 1942.

Q. You knew at the time you went down there to make this contact at Ziegler's that the application or registration forms in the OPA files disclosed that the West Coast Supply Company was composed of John H. Ziegler, Allan Ziegler and Raymond Ziegler? You knew that, did you not?

A. No, sir. The only way I would know that, I know that the files, form R-305, indicates that that was the case on the date that was filled out. But on the date I went down there, I would have no idea from that file what the situation was at the present time.

(Testimony of Lomax Young)

Q. Just for a moment I should like to clear up one point, Mr. Young.

Are you sure it was Raymond Ziegler that you talked to in the morning? [277]

A. Yes, sir. It was in the morning that he signed the statement that—

Q. Is this it (indicating)?

A. That was in the morning.

Q. That was in the morning. When you came back that afternoon Mr. Paul Ziegler and Allan Ziegler themselves came back from somewhere up town and found you there when they got there, is that not right?

A. I got back there a little earlier than Paul did. He returned with some gentlemen, and I didn't notice. I couldn't say offhand whether the other gentleman was Raymond Ziegler or not when they returned. I was outside the building.

However, I did see them both in the afternoon, if that is what you mean.

The Court: When you say "both" to whom do you refer?

The Witness: Raymond and Paul.

Q. By Mr. Carr: During the morning, now, you had no talk with Raymond?

A. Yes, I had no talk with Raymond during the morning.

Q. I mean Allan. You had no talk with Allan in the morning? A. I couldn't say for sure as to that.

Q. Who was present? Just repeat who was present at the times that Raymond is supposed to have said, or Allan, anything about what Paul's capacity was at the plant. [278]

(Testimony of Lomax Young)

A. To the best of my recollection, it was special agent Pruitt, special agent Gould, and I think the accountant, Mr. Penrod, and the other accountant whose name I don't recall. I believe the two accountants were also present.

Q. Where were you? What part of the premises?

A. There is a counter in their front office. We were on the outside of the counter, and Raymond Ziegler was on the inside.

Q. Where was Allan? A. Allan?

Q. In the afternoon? I am talking about the afternoon now.

A. At whichever time I talked to Allan, he was on the opposite side of the counter from me.

Q. Well, which time was it that you talked to Allan?

A. I don't recall exactly which time, whether it was in the morning or the afternoon.

Q. Who was present besides the agent? Don't repeat those. It is not necessary to go over that.

A. I can't recall whether Raymond was present all the time I talked to Allan or part of the time or any of the time. They kept switching back and forth from the counter to various other offices at one time or another. While I was engaged in conversation with one particular one, I had no opportunity of noticing particularly whether or not the other one was present [279] or whether he had just left or just come back.

Q. Well, now, what was the statement again and who was it that made the statement about Paul's relationship with the business? A. It was Raymond Ziegler.

Q. When was that made?

A. The statement that he wouldn't show me the records, except in the presence of Paul, was made in the

(Testimony of Lomax Young)

morning; and in the afternoon conversation with him when he was confronted with the circumstance of Paul being present, he told me then that he wouldn't show me those records on advice of his attorney.

I asked him who his attorney was. He said he hadn't selected one yet.

I told him apparently I misunderstood. I was confused. I didn't understand what he meant that he wouldn't show me the records on advice of his attorney who he hadn't even selected yet.

He said, "Well, what I mean is I won't show you the records until I talk to my attorney."

I asked him if his attorney was William Handy. He said no. Or whether it would be William Handy, and he said he didn't think so. I asked him if the attorney would be Abe Gottfried. He said he didn't think so. I asked him if his attorney would be Paul Ziegler, and he very definitely answered [280] no.

Q. You did know at that time, then, that Paul was an attorney?

A. I had heard that Paul Ziegler was an attorney. I don't know of my own knowledge yet.

Q. You seem to remember those names very well, the names of those attorneys.

I wish you would refer to something. You keep records, do you not? A. Of what?

Q. Of your interviews? A. Not necessarily.

Q. Don't you make notes? A. Occasionally.

Q. Do you have the notes for that day? I don't want to see them now. I just want to know if you have the notes.

(Testimony of Lomax Young)

A. I don't recall that I made notes that day, other than the statements that were written in my handwriting here.

Q. Generally, though, after a day's work you write up a report or make some notes so that you will know what you did on that day; is that not right?

A. Occasionally.

Q. It is the general practice in the OPA, is it not, the same as in the FBI?

A. I wouldn't know about the general practices in other [281] agencies.

Q. You depend on your memory, then, to recall these incidents back months past when you come up to testify on a case?

A. Well, the identity of these attorneys was a rather simple matter, inasmuch as William Handy had formerly been the chief litigation attorney of the Enforcement Division at OPA, and I knew him personally. Abe Gottfried had formerly been an attorney with OPA. I had had occasion to become acquainted with him through various matters in connection with the OPA.

Prior to my going down for this conversation there had been a suspension order proceeding before the Hearing Commissioner, and Abe Gottfried represented West Coast then.

Mr. Carr: Your Honor, I don't think we need to go into that.

Mr. Strong: I will agree to strike that.

The Court: All right.

Q. By Mr. Carr: You did not mention my name to him, did you?

A. No, sir. I had never met you, sir.

(Testimony of Lomax Young)

Mr. Carr: That is all.

The Court: Any questions?

Mr. Strong: Just one more question. [282]

Redirect Examination

By Mr. Strong:

Q. Did you ask Raymond Ziegler at any time who was managing the West Coast Supply Company on that day? A. I—

Mr. Carr: That certainly is a leading question, your Honor, as to one of the very specific issues involved. I do not think counsel ought to express it so that a yes or no answer is the situation.

The Court: No. I think Mr. Carr is correct in that.

Mr. Strong: I won't ask that question at all. Just strike that. That is all.

The Court: All right.

(Witness excused.)

Mr. Strong: Mr. Gould.

The Court: For the record, what is Mr. Gould's full name?

Mr. Carr: Before he comes, may I move to strike the testimony of the previous witness on the ground it is not material to the issues in the case and can be prejudicial to both defendants.

The word used, as I recall, was "managing."

That does not indicate a partner. Some man could be hired to be a manager.

The Court: I think that is a matter of argument. Motion [283] denied.



CHARLES E. GOULD,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Charles E. Gould, G-o-u-l-d.

Direct Examination

By Mr. Strong:

Q. What is your occupation, Mr. Gould?

A. Special agent for the Office of Temporary Controls, Office of Price Administration.

Q. Were you so employed by the Office of Price Administration in July and August, 1946?

A. In August, 1946.

Q. Directing your attention to August 22nd, on or about August 22, 1946, did you, in company with any other agents of the Office of Price Administration, have occasion to go to the premises of the West Coast Supply Company?

A. Yes, sir, I did.

Q. How many times did you go there that day?

A. Twice.

Q. Now, can you give us the names of the persons you went with? [284]

A. Yes, sir. There was Mr. Pruitt, Mr. Young; and I don't know the names of the other two gentlemen. They were auditors from the district OPA office.

Q. Mr. Young of the Office of Price Administration?

A. Yes, sir.

Q. Mr. Pruitt?

A. Mr. Pruitt, a special agent.

(Testimony of Charles E. Gould)

Q. Did either you or any of the other agents who were with you see or speak to any of the Zieglers on the premises of the West Coast Supply Company the first time you went there on August 22nd?

A. Yes, sir.

Q. What time was that, about?

A. About 11:30 in the morning.

Q. Who was there of the Zieglers that you spoke to?

A. One of us talked to Raymond Ziegler.

Q. Now, without going into any of the reasons why you were there, or anything else, will you state whether Raymond Ziegler made any statement to you or in your presence as to the capacity of the defendant, Paul Ziegler, in connection with the West Coast Supply Company?

A. I heard Raymond say to Mr. Young that he would have to present the inspection audit to Paul Ziegler because he was the one that handled the sugar account and that he was actually doing the managing of the place.  
[285]

Mr. Strong: That is all.

Mr. Carr: I move to strike the testimony as being immaterial, your Honor, to the issues in the information.

The Court: Overruled.

Mr. Carr: That is all. No questions.

(Witness excused.)

Mr. Strong: Mr. Loud.

THADDEUS R. LOUD,

a witness called by the Government, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Thaddeus R. Loud.

The Clerk: L-o-u-d?

The Witness: Yes, sir, T-h-a-d-d-e-u-s.

Direct Examination

By Mr. Strong:

Q. What is your occupation, Mr. Loud?

A. I am the assistant special agent in charge of the Division of Special Investigations of the Office of Price Administration.

Q. Were you employed by the Office of Price Administration in that or any other capacity during 1946?

A. Yes, sir. [286]

Q. What capacity were you employed in during the beginning of 1946?

A. Special agent, the same division.

Q. During the early part of 1946 did you have occasion to discuss any matters with reference to the sugar rationing account of the West Coast Supply Company with any of the Zieglers?

A. Yes, sir.

Q. Which one? A. Paul J.

Q. Is that the defendant? A. Yes, sir.

Q. Where did this discussion take place?

A. In my office at 1031 South Broadway.

Q. Who was present?

A. Jack Foster, who was then the agent in charge, and Jona H. Taylor, who was his assistant, and myself.

(Testimony of Thaddeus R. Loud)

Q. Was Mr. Paul Ziegler there? A. Yes, sir.

Mr. Carr: What is that date? Did he give a date?

Q. By Mr. Strong: What was the date?

A. The best that I can recall, it would be around the first week or first 10 days of February, 1946.

Q. What was the purpose of this discussion with Mr. Ziegler? [287]

Mr. Carr: I am going to object to this. The date shows it is in February, 1946, several months before any alleged charge in the information, your Honor.

Any discussion with this defendant at that time would certainly have no bearing on the issue in this case.

The Court: Unless to show knowledge of the regulation, is all.

Mr. Strong: And willfulness, your Honor.

The Court: That is the only part. That must be established by the Government.

Mr. Carr: Well, if that is the point—

The Court: Yes, if it goes further than that, I shall entertain a motion to strike because it is antecedent to the offense charged.

Mr. Carr: I think counsel should state his purpose on a thing like that.

Mr. Strong: Shall I approach the bench, your Honor?

The Court: No, it is not necessary. Proceed.

(Question read by the reporter.)

The Witness: To ascertain the amount of sugar the West Coast Supply Company had received and was receiving at that time.

Q. By Mr. Strong: During this conversation with Paul Ziegler was there anything said about overdrawing

(Testimony of Thaddeus R. Loud)

of the sugar ration account of the West Coast Supply Company? [288]           A. Yes, sir.

Mr. Carr: I object to this as being outside the issues charged in the information.

The Court: Yes, I do not believe that part of the testimony is competent, unless the defendant's attention was called to some particular regulation with reference to the sugar ration.

Mr. Strong: If your Honor please, I think that a lot of times an objection and answering might be saved if counsel and I could approach the bench and I could state to your Honor specifically what the testimony will be so that your Honor can judge in full.

The Court: It may take a little more time, but I think you had better just proceed this way and ask the questions, Mr. Strong.

Mr. Carr: Well, now, did you rule on my objection, your Honor?

The Court: Yes, I sustained that. I suggested to counsel that if there are any matters that pertain to bringing home to the defendants knowledge as to the regulations at that time, sugar rationing, and so forth, that that is admissible; but that would be a different offense. I do not say there was. Maybe there was not any offense at all. There is not any evidence that there was an offense prior to July 1, 1946, alleged in this information. [289]

However, any knowledge or statement made with reference to regulations to the defendant at that time will be permitted.

Mr. Strong: May I be heard further?

(Testimony of Thaddeus R. Loud)

The Court: Yes.

Mr. Strong: I should like to offer it for a more extended purpose.

I think that the knowledge of the regulations is presumed since they are published in the Federal Register. My purpose is to show willfulness on the part of this defendant.

The Court: Yes, certainly. I have already stated that.

Mr. Strong: I am sorry. I thought your Honor was restricting it.

The Court: Oh, no.

Q. By Mr. Strong: Did the defendant, Paul Ziegler, make any statement or indicate in any way how he intended to obtain sugar after his ration account had been depleted?

Mr. Carr: Now, just a moment. That is assuring something that is not in evidence, saying that after the ration account was depleted; secondly, it is inquiring as to a time that is far antecedent to this information, and it certainly is going to work to the prejudice of this defendant if we get off into collateral issues. Then we will have to determine whether he violated some other regulation, your Honor.

The Court: Let me make it clear again.

Any knowledge brought to the defendant with reference to the regulations, or anything that he said with reference [290] to his attitude towards those regulations, is admissible. I am excluding any testimony at all with reference to an alleged overdraft or anything else that there might have been prior to July 1, 1946.

I think that that is very clear. The Government must show willfulness in this matter. All right.



(Testimony of Thaddeus R. Loud)

Mr. Strong: What is your Honor's ruling?

The Court: Read it.

(Record read by the reporter.)

The Court: Does that clear it up?

Mr. Strong: I am sorry. I do not understand your Honor's ruling on the question because it is my purpose to show willfulness by language of the defendant at that time.

The Court: I said you could. Now, I shall keep repeating it, Mr. Strong, if you want me to.

Read it again to Mr. Strong.

(Record read by the reporter.)

The Court: Now, that is the statement: the Government must show willfulness. That is what you asked me, and I repeat it again:

Any evidence you have of wilfullness will be admitted.

Mr. Strong: I apologize, your Honor. I did not understand that.

The Court: That is all right.

Mr. Strong: Will you please read the question to the [291] witness?

Mr. Carr: That is the question I am objecting to.

The Court: Overruled. Proceed.

Mr. Carr: Well, your Honor, I think you want to hear that question again. It is presuming something that is not in evidence.

The Court: It has been limited to what I have said.

Mr. Carr: Yes. The question is formulated where it is assuming something not in evidence. If your Honor wants to pass it without hearing it again, naturally you will do so.

(Testimony of Thaddeus R. Loud)

The Court: The witness understands, I think, with the admonition that I have given as to any statement that has been made.

Now, it is very clear; and that is the question. I understand it is limited to that.

Well, that may be stricken out and reframed.

Q. By Mr. Strong: Did the defendant Paul Ziegler make any statement or indicate in any way how, if in any manner, he intended to obtain sugar in the event that his account was depleted.

Mr. Carr: Well, now, that certainly is objected to upon the basis it is based on a contingency. There is no foundation showing any contingency existed. It is prior to the time of the information.

The Court: Give the conversation between yourself and Paul Ziegler. [292]

Mr. Carr: May I respectfully object to that?

The Court: Overruled.

Mr. Carr: On the ground it is going to lead into—

The Court: I am trying to get to the issues, and you have objected to all of those questions. I want the conversation. Go ahead.

The Witness: We asked Mr. Ziegler how it was that a number of ration checks had been returned to the OPA, all signed by a certain person.

Mr. Carr: Now, if the court please, it is obvious to me that counsel is trying to prove what is known as similar offenses, apparently. And he is leading into a collateral issue, another investigation; and it is going to certainly develop prejudicial testimony in this case.

The Court: He can show intent, can he not, counsel?

(Testimony of Thaddeus R. Loud)

Mr. Carr: He can show intent, but if he is going to bring in collateral offenses or alleged offenses, he cannot do it that way.

Mr. Strong: I am not seeking to bring in the fact of any collateral offenses, and I should like to state to the witness that he is not to go into any other offenses; merely to answer the question as to the conversation with reference to the facts in the case.

The Witness: Well, Mr. Ziegler informed us that he felt that the sugar rationing was going off and that he was going [293] to get sugar one way or the other, and his allotment period in January was like other allotment periods: he was short of sugar, and inasmuch as the meat rationing and gasoline, processed foods had gone off and no accounting was ever made of the filling station people or the grocers or the butchers as to how many points they had left or if it equaled their inventory, he felt that the same would happen to sugar. And he was going to get it one way or the other.

We informed him that sugar rationing was not off and that anything he did contrary to the regulations would not be legal.

He replied that he was not going to be caught short and he was going to build up his inventory in case the sugar rationing went off, and he was going to be supplied with as much as he could possibly get.

Q. By Mr. Strong: Is that all? Did he say anything as to overdrafts? A. Yes. He said that—

Mr. Carr: That is certainly objected to on the ground it is not material. It is prejudicial to the defendant, all of this conversation.

The Court: Yes, I shall sustain that objection.

(Testimony of Thaddeus R. Loud)

Mr. Strong: As to the entire conversation or this last question?

The Court: Read the question.

(Question read by the reporter.) [294]

The Court: Read the objection.

(Record read by the reporter.)

The Court: Well, that is just limited to this question, of course.

Mr. Strong: No further questions.

Mr. Carr: That is what I understood.

Mr. Strong: I am sorry. I misunderstood again. I apologize.

The Court: All right.

Mr. Carr: Your Honor, would a recess be appropriate?

The Court: Yes.

Ladies and gentlemen, remember the admonition I have heretofore given you. Do not discuss the case among yourselves nor permit anyone to discuss it in your presence. Do not form nor express any opinion until the case is finally submitted to you under the instructions of the court.

We will now take the morning recess.

(Brief recess.)

The Court: Call the calendar, Mr. Cross.

The Clerk: Yes, your Honor. No. 19,106 Criminal, United States v. West Coast Supply Company and Paul J. Ziegler.

Mr. Strong: Ready for the Government.

Mr. Carr: Ready.

The Court: Stipulate the jury is present?

Mr. Strong: So stipulated. [295]

(Testimony of Thaddeus R. Loud)

The Court: And the defendant is in court?

Mr. Carr: So stipulated.

Mr. Strong: So stipulated.

The Court: Proceed.

Mr. Strong: That is all.

Cross Examination

By Mr. Carr:

Q. Mr. Loud, did you have with you that day Mr. Jack Foster, Mr. Jona Taylor and some other gentleman? Who was it?

A. Myself was the only one that I recall.

Q. Three or four?

A. There were three of us and Mr. Ziegler.

Q. And that 1031 South Broadway: Is that your office? A. That was at that time, yes, sir.

Q. And you called up Mr. Ziegler and told him to come down?

A. We had requested his presence, yes.

Q. He came down at that time? A. Yes, sir.

Q. At that time did you know that Mr. Ziegler was a lawyer? A. Yes, sir, I did.

Q. You say that he said at that time he was going to get [296] sugar one way or another?

A. Yes, sir.

Q. The West Coast Supply Company's name was not mentioned at all in that conversation, was it?

A. Yes, it was.

Q. As a matter of fact, you were not even investigating the West Coast Supply Company at that time, were you? A. Not directly, no, sir.

(Testimony of Thaddeus R. Loud)

Q. Do you at the end of each day write up some minutes or notes, or something, of the day's activities so that you may look back from time to time and see what occurred?      A. Yes, we do.

Q. Do you have your notes with you for that day?

A. No, sir, I do not.

Q. Are they available?      A. No, sir.

Q. What has happened to them?

A. I do not know what happened to them. I think from time to time our notes are destroyed, and I have looked for them; and in moving our offices we destroyed a lot of papers we did not think of any value, and perhaps they were lost then.

Q. So you are depending entirely on your recollection of that conversation?      A. Yes, sir. [297]

Q. Now, just approximately—I know you can't be specific—how many people have you interviewed since that time in connection with your investigation of OPA activities? Just a rough figure.

A. Oh, thousands.

Mr. Carr: That is all, thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Strong: I have no further witnesses, your Honor.

However, at this time I believe there were some documents which are not as yet in evidence.

At this time I offer again Government's Exhibit 6 for identification, which is the check for 600,000 pounds.



Mr. Carr: I want to reiterate all of the objections I have heretofore made and specifically add to that that this check, by the testimony of the Government's own witnesses, has shown to have been altered in that "West Coast Supply Company" was written in after the check was issued.

Mr. Strong: The testimony also shows, your Honor, that this is the check concerning which Government witness Hartt spoke to Paul Ziegler when it came into the bank, and the stipulation also shows that the signature "Paul J. Ziegler" is that of the defendant.

This is also the check which the Government witness testified was received in connection with the purchase of [298] 600,000 pounds of sugar through the broker from the Union Sugar Company. And the records in evidence show that that sugar was finally delivered, except the 220,000 pounds.

Well, I think all of that sugar was delivered, if I am not mistaken.

May I correct that? 380,000 pounds of the 600,000 pounds were delivered.

That is what the testimony and the records show.

The Court: In evidence.

The Clerk: Government's Exhibit 6 in evidence.

(The document referred to was marked Government's Exhibit No. 6 and introduced in evidence.)

## [GOVERNMENT'S EXHIBIT NO. 6]

NON-TRANSFERABLE

— RATION CHECK —

THE UNITED STATES OF AMERICA  
OFFICE OF PRICE ADMINISTRATIONCHECK NO. 14-1

TRANSFER TO THE

SUGAR

RATION BANK ACCOUNT OF

Union Sugar Co.  
(NAME OF BELLER)Six Hundred Thousand  
(AMOUNT IN WORDS)

DATE

7/1 1946

AMOUNT IN FIGURES
600,000 -
POUNDS OF
SUGAR

TO THE

UNION BANK & TRUST CO.  
OF LOS ANGELES  
COMMERCIAL TRUST

West Coast Supply Company

(PRINT OR TYPE NAME OF YOUR ACCOUNT)

S/LINGS

FR-121

LOS ANGELES, CAL.

16.77

Paul J. Ziegler  
(AUTHORIZED SIGNATURE)

39	PAID THROUGH CLEARING HOUSE OR	39
PAY TO THE ORDER OF Any Bank, Banker or Trust Co. PRIOR ENDORSEMENTS GUARANTEED		
PAY TO THE ORDER OF PAYEE'S BANK OR PAYEE'S 30 JUL 11 1946 PRIOR ENDORSEMENTS GUARANTEED		
PACIFIC NATIONAL BANK 11 39 IN SAN FRANCISCO 11-39		
16-16 IN AMERICA 16-16 FEDERAL RESERVE BANK OF SAN FRANCISCO		

Union Sugar Co.

19/46

7/4/46

7/10/46

66

L. Ziegler

Mr. Strong: May I show that to the jury, your Honor?

The Court: Yes.

Mr. Carr: Is that in evidence as to both defendants, your Honor?

The Court: No. It is in evidence against Paul J. Ziegler and not in evidence against the West Coast Supply Company.

Mr. Strong: At this time, your Honor, I move that all the Government's Exhibits received in evidence as against Paul J. Ziegler also be received as against the defendant West Coast Supply Company.

The basis for that request is that the evidence here shows, I believe, that the defendant Paul J. Ziegler was acting on behalf of the West Coast Supply Company, without [299] regard to whether he is a partner or not.

The regulation prohibits certain acts, the Second War Powers Act, I should say; and the regulations prohibit certain acts committed by persons who are defined, as I have heretofore read to your Honor, to include "an individual, a partnership, an association, a business, trust, a corporation or any organized group of persons, whether incorporated or not."

I don't think it makes any difference in this case whether Paul J. Ziegler is or is not a partner, since he would come within the definition; and the "other persons," the West Coast Supply Company, would come within the definition of "person" meaning any other group of persons, whether incorporated or not.

If the defendant Paul J. Ziegler is acting on behalf of those persons—and the Congress saw fit to make the entity, the group entity, "a person"—in that case the act

of any one member of that entity, whether it is in the form of a partnership or in any other form is the act of that entity.

The Congress has the power to make entities for the purposes of prohibitions and other acts of any and all groups by name, whether they are organized in accordance with common law, titles of partnership or anything else.

I think that in this case the evidence is sufficient to show that Paul J. Ziegler, when he was acting, was acting only on behalf of himself; was acting on behalf of the group, which [300] is here designated by the name "West Coast Supply Company," regardless of whether it is a partnership or whether he is in it or whatever form it takes.

For those reasons I move that all evidence admitted against Paul J. Ziegler be admitted against the West Coast Supply Company.

The Court: It is true that the act of a partner within the scope of the partnership binds all the partners. But that rule does not extend to binding a partnership for an act beyond the scope of the partnership or an illegal act.

Mr. Strong: May I say something?

The Court: Yes.

Mr. Strong: I think the act in this case of issuing the checks in this entire sugar transaction was not only within the scope, as it might be construed from the association between these persons, but it is also, I believe, ratified by the West Coast Supply Company.

The method of ratification here is shown, first, by the fact that when statements are sent by the bank to show

withdrawals against that account, they are sent to the West Coast Supply Company. And the bank officer testified that at no time had there been any complaint as to the charging of these checks against that account.

I think that that act in itself constitutes a ratification of the issuance of the check against that account by Paul J. [301] Ziegler, whether he does so in his own name or whether he adds or does not add the "West Coast Supply Company" to it. Those checks were charged against the account, and I think the testimony is sufficient to indicate that they were sufficiently intended to be charged against that account when they were issued.

The testimony of at least one witness here indicated that when he called Paul J. Ziegler to return the check, Paul authorized him to insert the name of the West Coast Supply Company.

In addition to that, your Honor, the sugar was received, was shipped to the West Coast Supply Company, regardless of the particular or precise relationship which may exist between the parties, at the address, 1646, or whatever the address was. It was shipped there and received by the West Coast Supply Company. And the other partners, at least on one occasion the partner Raymond Ziegler, indicated affirmatively that the person with whom dealings were to be had was Paul J. Ziegler. That came in the testimony of one of the agents here.

The signature card with the bank indicates that the persons who could draw checks on their own signature against the account of West Coast Supply Company were, in the first instance, authorized as "Paul J. Ziegler." That is in the card here.

The card, your Honor, if a simple comparison is made [302] between the signature of Raymond Ziegler



on this document, which document your Honor admitted only as to the signature, Government's Exhibit 38—your Honor can see it; and I don't think we need any handwriting expert—that that is Raymond Ziegler in both instances; that that is the same signature and that Raymond Ziegler, who is the managing partner of the West Coast Supply Company, has apparently agreed to authorizing Paul J. Ziegler to act on his behalf in drawing these checks in each instance.

The Court: When you authorize one to draw on an account or authorize, assuming there was a partnership without indicating there was or was not, you assume that that is an authorization, for instance, on the part of the partnership to commit an illegal act.

Mr. Strong: Not in and of itself, your Honor.

The Court: No.

Mr. Strong: But when that is followed by the receipt of the sugar covered by the ration check and when that is followed by the statement of the bank showing withdrawal from that account and no complaint, no objection to the withdrawal against that account by these specific checks, I think that those facts taken together indicate an authorization, an approval of the act previously committed, if nothing further.

The Court: That, I am inclined to believe, would be a sound statement of the law with reference to a civil liability. [303]

What is the evidence here with reference to bringing home to Allen and Raymond knowledge of these overdrafts? Where is the evidence that brings home that knowledge to those individuals?

Mr. Strong: The evidence is that the bank sends a statement every three months, including those items.



The Court: That would be inference, would it not? It would not be direct testimony.

Mr. Strong: I think it is acceptable evidence, that inference.

We are not charging, your Honor, the individuals individually. We are charging the West Coast Supply Company as an entity, as the Congress permits under the Act. And the entity received the bank statement and the entity received the sugar. The sugar was shipped and delivered to West Coast Supply Company.

That is what the evidence is at this point. That entity received that sugar. That entity also received the bank statements.

I think that those two acts indicate that that knowledge was brought to them. Certainly when you receive a million pounds of sugar, it comes to your door, you take notice of the fact that you are getting a lot of sugar and if you have not authorized anybody to get it for you, you are put on notice that there is something wrong. [304]

That sugar has never been returned. That sugar was delivered to the West Coast Supply Company. It was delivered pursuant to those checks.

The Court: It is 10 minutes to 12:00.

Ladies and gentlemen of the jury, you will remember the admonition I have heretofore given you.

You will not discuss the matter among yourselves or permit anyone to discuss in your presence. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court.

I shall ask you to return at 2:30 because you will probably not be interested in the argument that is being presented to the court. So you will come at 2:30, please.

The court will adjourn until 2:00 o'clock for the regular session.

(Whereupon, at 11:50 o'clock a.m. an adjournment was taken until 2:00 o'clock p.m. of the same day.) [305]

Los Angeles, California, February 6, 1947, 2:00 P.M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 19,106 Criminal, United States versus West Coast Supply Company and also Paul J. Ziegler for further jury trial.

Mr. Strong: Ready for the Government.

Mr. Carr: The defendants are ready.

The Court: Is it stipulated the defendant is in court?

Mr. Strong: Plaintiff so stipulates.

Mr. Carr: So stipulated.

Mr. Strong: May I continue, your Honor?

The Court: Yes.

(The following proceedings were had in the absence of the jury.)

Mr. Strong: The only other point that I would like to make is the point that, in view of the fact that a person, as defined within the statute, includes a group of organized persons, regardless of the fact of what their personal relationship may be as among themselves and in view of the fact that the obvious purpose of that definition which broadens the person from just an individual to others, to make an operating entity a person within the terms of the provision, in every instance, and in such instance, I submit to your Honor, any act of any agent of an operating entity, where it does not make any difference

whether he is a partner or an officer or [306] anything else, that act of the agent is the act of the entity as a separate person.

The entity could not possibly act except through that person.

In this particular case I think that regardless of whether the West Coast Supply Company is or is not a partnership, as I submit again, I think that is immaterial.

It, at any rate, is an organized group of persons so as to make it an entity for the purposes of the meaning of "person" in this statute, and that that organized group, insofar as its actions in handling sugar, in obtaining sugar are concerned, that organized group includes at least Paul J. Ziegler and that his act, therefore, as the act of the human who can perform any act on behalf of the separate entity, the person, the West Coast Supply Company, that the act of Paul J. Ziegler then must of necessity be the act of the entity which is the person under this definition.

Mr. Carr: May I be heard, your Honor?

The Court: No, it is not necessary.

I announced before recess some general statement which I thought was law, and during the recess I find myself fortified in those general conclusions.

" . . . Strictly speaking, there can be no ratification of a criminal act in which a specific intent is necessary. 'He (the principal) must be liable, if at all, at the [307] time the act is done' . . ."

Citing Clark & Marshall on Crimes (3d Ed.) Section 194, at page 255.

"In *Nobile v. United States*, 3 Cir., 1922, 284 F. 253, 255, the court said: 'Criminal liability of a principal or master for the act of his agent or servant does not extend

so far as his civil liability. He cannot be held criminally for the acts of his agent, contrary to his orders, and without authority, express or implied, merely because it is in the course of his business and within the scope of the agent's employment, so he might be liable civilly.' "

(Citation from *United States v. Food and Grocery Bureau of Southern California*, 43 Fed. Supp. 966 at 971.)

You will recall, gentlemen, that was practically the statement I made this morning.

In *Paschen v. United States*, Seventh Circuit, 1924, 70 Fed. (2d) 491, quoting:

"Civilly (one) is responsible for (the) acts and doings of (his) accredited agent acting within (the) scope of (his) authority,"

while one may be criminally liable only in case he intentionally does that which the law denounces and penalizes.

And a short reference to *United States v. Wilson*, District Court, Washington, 1932, 59 Fed. (2d) at page 97; [308] I find the expression:

". . . nor can we bind a defendant who is shown to have been the agent of another defendant, either individually or groups, unless the evidence shows that what he did was done with the principal's authority and under his direction."

The court finds that there is no evidence here on the part of the Government establishing a partnership. There is no evidence before the court as to whether or not this fictitious name ever complied with the statutes of the state in adopting this name by the promoters, and there is no evidence here directly connecting the other mention-

ed parties, Raymond and Allen, with any offense, if any offense has been established, which is a matter, of course, for the jury.

The court will, therefore, exclude and will limit all of the testimony in the case and the exhibits, whatever effect they may have, to the activities of Paul J. Ziegler and will not permit this testimony to be applied in any way to the West Coast Supply Company.

Mr. Strong: May I make a request, your Honor? May I respectfully request that your Honor withhold that ruling until both cases are in?

I think your Honor has the discretion to do so and not to limit it at this time, but simply to withhold ruling on my motion to apply all the evidence to West Coast Supply [309] Company until both sides have rested?

The Court: Well, I am confronted here with the situation, Mr. Strong, of passing on these exhibits under your motion, and I have to rule on that motion when it is presented.

Mr. Strong: May I withdraw the motion?

The Court: If you withdraw the motion, then I will withdraw the ruling, of course.

Mr. Strong: Thank you, your Honor.

The Court: Have you any other testimony?

Mr. Strong: No, the Government rests.

The Court: All right.

Mr. Carr: There are one or two matters, your Honor, before the Government rests that I should like to point out.

We had a couple of witnesses—I am sure Mr. Strong would not want me to catch him by surprise—that were

relieved from the stand. One of them I don't think I even cross examined. In fact, neither of them was cross examined.

The Court: There was one witness who was supposed to be here at 2:00 o'clock to give us some information.

Mr. Carr: Now, this gentleman, Mr. Hartt, was supposed to be back.

Therefore, Mr. Strong, I suggest we clear up those matters before you close your case.

Mr. Strong: Oh, surely. I didn't know you wanted to follow that. [310]

I reopen the case to put the witness on the stand.

The Court: The Government's case will be reopened.

Mr. Carr: I think we can eliminate the testimony if we can stipulate that when he returns he will say he cannot find the card.

Mr. Strong: So stipulated. There was another man, your Honor, who was an OPA agent of the stand this morning.

Mr. Carr: That's right—Mr. Garver.

There was one other witness, too. There was Mr. Tingle who I believe was excused by Mr. Strong to go and procure some documents.

The Court: Oh, yes.

Mr. Carr: And I did not cross examine him.

The Court: For the social security card?

Mr. Carr: No. No, that is another one.

Mr. Strong: Tingle is an Alcohol Tax Unit agent who started testifying that he didn't have the card.

I move to strike Mr. Tingle's testimony.

Mr. Carr: That is satisfactory.



The Court: He was to bring in the instrument, that demand instrument.

Mr. Carr: That's right. So we are in accord with the motion to strike, and that will dispose of that.

The Court: All right.

Mr. Carr: There was one other witness you had who was [311] to bring back a social security card.

Mr. Strong: Yes. He came back, and he showed me the social security card which does not show the name of any employer. It simply says "social security card" and then it has name and a number. I thought that possibly that card would indicate an employer, but there was no indication at all.

Mr. Carr: Then we can stipulate he may be excused?

Mr. Strong: Yes.

Mr. Carr: That leaves us with Mr. Garver, your Honor. And I hate to have you call him to the stand, Mr. Strong, and then immediately start on more motions I want to make to the court.

I wonder if we could not just take up those motions now?

Mr. Strong: I will agree to that, your Honor. And then when Mr. Garver comes, Mr. Carr can call him at any time.

Mr. Carr: There is just one thing I want to prove by him, and that is the original certificates. If you will stipulate, I won't have to call him.

Mr. Strong: Stipulate those are official records of the Office of Price Administration on the dates shown?

Mr. Carr: Yes. If you have those, we can stipulate to them.

As I understand it, Mr. Strong, you will stipulate that these two documents—maybe I had better ask that they be marked as Defendant's Exhibits 1 and 2. [312]

The Clerk: A and B.

Mr. Carr: A and B. Pardon me.

The Clerk: Defendant's Exhibit A and B for identification, respectfully.

(The documents referred to were marked Defendant's Exhibits Nos. A and B for identification.)

Mr. Carr: Those, Mr. Strong, I understand are from the—

Mr. Strong: We will stipulate that they are part of the official files of the Office of Price Administration.

Mr. Carr: This is the registration certificate of the—

The Court: What is the number?

Mr. Carr: The first one, Exhibit A, your Honor, is the registration certificate on Form R-305 of the West Coast Supply Company.

Mr. Strong: 1942?

Mr. Carr: Where is the date? 1942, yes. And Exhibit B is a registration certificate for the same concern on Form R-305.

I will just leave those marked at this time for identification, if I may.

The Court: Read the last statement with reference to the last exhibit.

(Record read by the reporter.)

Mr. Carr: That clears everything up except for one [313] thing, your Honor.

I made a request yesterday respecting the matter of examining typewriters.

I called Mr. Clarke Seller's office, and unquestionably he is out engaged in a matter. And I called him today at lunch, and he will not be back until late this afternoon. So I asked them how long it would take. They said it would take at least a day to make that examination.

Under those circumstances, the way the case is going, I frankly do not feel that I am propably disposed to insist that the court delay this case on account of that matter.

So without any prejudice one way or the other, I suppose I had better not attempt to do that.

The Court: You can put it in your own case if you feel it necessary and advisable.

Mr. Carr: Yes, your Honor, certainly.

The Court: So there will be no prejudice.

Mr. Carr: But I wanted the court to know that I had made that effort.

Mr. Strong: The Government rests.

The Court: What is the date of Exhibit B for identification?

Mr. Strong: 7-2-42.

The Court: All right.

Mr. Carr: If the court please, there are various matters [314] I want to take up.

First I want to move under Rule 29 of the Rules of Criminal Procedure for the court to order an entry of judgment of acquittal on each and every count of the information as to both defendants, the West Coast Supply Company and Paul J. Ziegler.

Perhaps the order in which I take these up may save some time, your Honor.

The Court: How much time would you like, Mr. Carr?

Mr. Carr: Well, I can't say, your Honor, because if your Honor might make certain rulings, it would eliminate some argument.

If I may just proceed, I will do it as rapidly as I can without imposing on the court. I assure you I won't try to impose on you.

I think possibly, your Honor, I can anticipate an hour if I can work the thing out the way I have in mind.

The Court: Proceed.

Mr. Carr: Now, first I want to take up the information itself, your Honor, and the grounds of that motion are simply this:

First, under Rule 12(b)(2), the Rules of Criminal Procedure, provides that the court may at any time take notice of and dispose of the failure or any or every count that charges an offense. [315]

The second proposition is that the evidence is insufficient to sustain a conviction on any of the counts against either one of these defendants.

At the outset, if the court please, I must necessarily take a moment and break down Count 1 which will be applicable to all of the counts throughout, except the odd-numbered counts.

The first count is drawn under Section 15.7 (d), and it charges in substance that on July 1st these defendants willfully performed acts prohibited by that section in that defendants did willfully issue and cause to be issued a sugar ration check.

The first proposition, your Honor, is that there is no sugar ration check in evidence by the very terms of Revised Ration Order No. 3.

The Government has failed to prove that either of the defendants issued the sugar ration check.

I think this establishes it conclusively, and I am reading now, your Honor, paragraph (5) of Section 24.1 of the Ration Order. "Check" is defined—

The Court: That was read the other day, and I have it in mind, Mr. Carr. Just put in the record the section to which you refer and omit the argument because I am satisfied on that.

Mr. Carr: Well, I won't read all of it, but let me say this: the check must be drawn by a depositor. In this case [316] there is no evidence whatsoever that Paul J. Ziegler was a depositor—absolutely none.

There is some evidence, of course, that the West Coast Supply Company was a depositor, and it is probably established that West Coast was a depositor. But the evidence is lacking, wholly lacking, in proof of the issuance of a sugar rationing check by the fact that it has not been sustained, even in a civil suit, that the West Coast Supply Company had anything to do with issuing that check.

That being the case, no sugar ration check has been issued, according to that allegation.

The next part of the allegation in the information is this:

“ . . . for an amount larger than the balance in the account on which it was drawn . . . .”

I am referring now to the definition of "Account."

"Account" is paragraph (1) of Section 24.1. That simply states:

“ 'Account' means a sugar ration bank account carried by a bank . . . .”

I submit that the defendant, Paul J. Ziegler, has no account with the bank at all. The check was not drawn by the West Coast Supply Company; so it is not a check drawn on the account, on the sugar ration account.

The next point in that information is simply this: [317] that is was drawn by the West Coast Supply Company by issuing and causing to be issued to Union Sugar Company a sugar ration check which is not a check, on the evidence, not a sugar ration check drawn by the West Coast Supply Company.

I submit, your Honor, there is no proof whatsoever to sustain a criminal charge here that it was drawn by the West Coast Supply Company.

Now, Count One finishes up with the assertion:

“ . . . when the West Coast Supply Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check.”

The proof has shown that the account was in the West Coast's name. The check was not issued by West Coast; so the charge certainly cannot be sustained as against Ziegler in issuing a check at all, much less an overdrawing check within that section because he must be a depositor; he must have an account.

That will save referring to the latter counts. One takes of that series of counts: One, Three, Five and Seven.

Respecting the question of alteration, your Honor, I am not going into that at length. I have cited the authorities. But I submit that particularly as to Count One and Count 5—they have to do with the exhibits; Count One is Exhibit 6—and that is the count, you will recall, which refers to the check on which Leland testified he changed the [318] name himself.

That is certainly an altered check within the meaning of the Revised Ration Order.

I shall cite the section, your Honor. That is Section 15.7 Paragraph (f) which in substance says that no



check may be issued, transferred or deposited if it has been altered.

The mere fact that Leland in the first count transferred it shows that this check could not be issued. I am not claiming any violation of Leland, but under the Revised Ration Order this check could not be issued.

Respecting Count Five, that is the count, your Honor, covering the 660,000 pounds of sugar to the Hawley Sugar Company, and that is Exhibit 4, check No. 146.

That was, as you recall, testified to by Barry; and Barry finally admitted that he or someone at his place had put in the name "West Coast Supply Co."

So I submit on the question of alteration on those two counts that specifically they must fall and not be considered as evidence.

Respecting the other two counts I, of course, still contend that the suspicion was created and they should not have been admitted.

That brings me up to the proposition of the second count which has the general pattern of Counts Four, Six and Eight.

The break-down of that count is that the defendants [319] willfully performed this act prohibited by Section 2.9, General Ration Order No. 8, in that the defendants did willfully receive a rationed commodity, 280,000 pounds of sugar, from the Union Sugar Company in exchange for a ration document, to-wit, a sugar ration check.

I submit under the definitions laid down there is no ration check in evidence in this trial at the present time.

Respecting all of these counts—One, Three, Five and Seven, which are the check counts—I submit there is no offense charged now in light of the proof.

The proof cannot sustain a conviction if one is brought in by the jury because Mr. Ziegler is not a depositor. There has been no sugar ration check issued.

Respecting Ziegler, as to Counts Two, Four, Six and Eight, there is not one scintilla of evidence, your Honor, that Paul Ziegler ever received one pound of sugar. So I submit those counts I have just enumerated, the receiving counts, a motion as to them properly lies as to Paul Ziegler.

Respecting the matter of partnership—now, I don't know how much or how far your Honor wants me to go on this. I do not want to impose on the court. But I have a considerable number of points and authorities here which, in my opinion, absolutely sustain the proposition that a partnership cannot be a defendant in a criminal case.

I have Federal authorities; I have State authorities. [320]

The Court: I am not interested in that question, Mr. Carr, at this time.

Mr. Carr: Very well, your Honor.

In breaking those counts down, your Honor, I say as a matter of proof the evidence is wholly insufficient to sustain any charge against either of the defendants at this time, taking every allegation and breaking it down.

Now I come up to the proposition, really, I suppose, constitutional questions which it might well be that I should ask the court to rule on if the court would first, and then I might dispose of some of those arguments.

The Court: Upon what do you wish the court to rule, Mr. Carr?

Mr. Carr: I am not trying to get you to indicate, your Honor. Please don't misunderstand me. But I want-

ed, for example under the Reconversion Act which makes certain provisions for small businesses such as these, to bring up the constitutional question respecting West Coast Supply Company.

That may take a little time, and I don't know whether I should proceed with that now or wait until your Honor disposes of those first points.

The Court: Well, I shall dispose of the point raised today, and I shall deny the motions so far made by the defense with reference to all the counts.

Now, as to the small business question, Mr. Carr, I [321] should like to hear that.

Mr. Carr: Very well, your Honor.

This Act, your Honor, was passed, as you will recall, on October 3, 1944. It is designated the War Mobilization and Reconversion Act.

I am going to just get right down to the very basic proposition. The philosophy of the Act was to try to go from war mobilization back to reconversion and to protect mainly small business.

Mr. Strong: May I interrupt, your Honor, simply to ask the citation so that I can follow better?

Mr. Carr: The War Mobilization and Recovery Act, Volume 50.

Mr. Strong: Appendix?

Mr. Carr: The new volume 50. It is one of the last acts, page 630.

Mr. Strong: What section is the citation?

Mr. Carr: Well, it starts at 1651, Title 50 Appendix.

Mr. Strong: Thank you.

The Court: I am not sure I got that Appendix citation.

Mr. Carr: That is Title 50 Appendix, Section 1651, et seq., your Honor.

The Court: All right.

Mr. Carr: (Reading.) "There is hereby established the Office of War Mobilization and Reconversion, which [322] shall be headed by the Director of War Mobilization and Reconversion . . . ."

Skipping down to (b):

"The following agencies shall be placed within the Office of War Mobilization and Reconversion and shall exercise their functions subject to the general supervision of the Director: . . . ."

Then it mentions Office of Contract Settlement, Surplus War Property Administration, and so on.

Then Powers (c):

"In addition to any powers which the President is authorized to and does delegate to the Director for the purpose of more effectively coordinating the mobilization of the Nation for war, the Director shall, subject to the direction of the President—

"(1) formulate or have formulated such plans as are necessary to meet the problems arising out of the transition from war to peace;

"(2) issue such orders and regulations to executive agencies as may be necessary to provide for the exercise of their powers in a manner consistent with the plans formulated under this section or to coordinate the activities of executive agencies with respect to the problems arising out of the transition from war to peace. Each executive agency shall carry out the orders and [323] regulations of the Director expeditiously and, to the extent necessary to carry out such orders and regulations,

shall modify its operations and procedures and issue regulations with respect thereto. Nothing contained in this section shall be construed as authorizing any activities to carry out any plans formulated under this section which are not within the scope of the powers possessed by the President or the executive agencies under provisions of law other than this section . . . .”

In other words, they are taking the law that is announced and they are mobilizing this effort into the War Mobilization Office.

“(3) recommend to the Congress appropriate legislation . . . .

“(4) promote and assist in the development of demobilization and reconversion plans by executive agencies . . . .”

Meaning OPA or any other agency.

“. . . develop procedures whereby each executive agency is kept informed of proposed demobilization and reconversion plans and proposals which relate to its work . . . .

“(5) cause studies and reports to be made for him by the various executive agencies . . . .

“ \* \* \* [324]

“(7) consult and cooperate with State and local governments . . . .

“(8) submit reports . . . .”

Now I come to the very meat of the Act, your Honor. Section 1658 provides:

“Curtailments of war production or terminations of war contracts shall be integrated and synchronized with the expansion, resumption, or initiation of production for other war purposes, and, to the greatest extent com-



patible with the effective prosecution of the war, of production for non-war use. To effectuate this policy—  
 . . .”

I am skipping the Survey by contracting agencies and coming down to

“(b) Resumption of civilian production”:

“the executive agencies exercising control over manpower, production, or materials shall permit the expansion . . .”

Now, mind you, it says:

“the executive agencies exercising control over manpower, production, or materials shall permit the expansion, resumption, or initiation of production for non-war use whenever such production does not require materials, components, facilities, or labor needed for war purposes, or will not otherwise adversely effect or [325] interfere with the production for war purposes. Such production for non-war use shall be permitted regardless of whether one or more competitors normally engaged in the same type of production are still engaged in the performance under any contract which is needed for the prosecution of the war . . .”

And mind you, your Honor, it says:

“. . . and shall not be made dependent upon the existence of a concern or the functioning of a concern in a given field of activity at a given time . . .”

To-wit, no longer can OPA, by an Act of Congress, use an historical base which base this very prosecution is predicated upon.

May I just repeat that?

“. . . and shall not be made dependent upon the existence of a concern or the functioning of a concern in a given field of activity at a given time . . .”



Now, this is Section 1659:

“(a) Whenever the expansion, resumption, or initiation of production for non-war use is authorized, on a restricted basis, by any executive agency have a control over manpower, production, or materials, the restrictions imposed shall not be such as to prevent any small plant capable and desirous of participating in such expansion, resumption, or initiation of [326] production for non-war use from so participating in such production.”

In other words, Congress is saying that that shall not be done any longer.

“(b) Whenever such executive agency allocates available materials for the production of any item or group of items for non-war use, it shall make available a percentage of such materials for the exclusive use by small plants for the production of such item or group of items. Such percentage shall be determined by the head of such agency after giving full consideration to the claims presented by the chairman of the board of directors of the Smaller War Plants Corporation and shall be fair and equitable.”

In other words, your historical base, insofar as small business is concerned, has been wiped out by an Act of Congress.

It goes on in Paragraph (c) to define small business:

“(c) In allocating the materials thus set aside among such small plants, such executive agency shall establish criteria, standards, quotas, schedules, or other conditioning factors after consultation with the chairman of the board of directors of the Smaller War Plants Corporation. Such executive agency shall allocate such materials directly to such small plants and shall, to the fullest extent practicable, provide [327] for making such

allocations through local offices easily accessible to such small plants. For the purposes of this title (sections 1656-1660 of this Appendix), a small plant means any small business concern engaged primarily in production or manufacturing either employing two hundred and fifty wage earners or less, or coming within such other categories as may be established by the head of such executive agency in consultation with the chairman of the board of directors of the Smaller War Plants Corporation. Such other categories shall be defined by taking into consideration the comparative sizes of establishments in a particular industry as reflected by the sales volumes, quantities of materials consumed, capital investments, or by other criteria which are reasonably attributable to small plants rather than medium or large size plants."

Your Honor probably read that in Washington the other day—have you had a copy of that opinion, your Honor?

The Court: I have read it.

Mr. Carr: You have already read it.

The Court: It was held up until it was passed on by the Circuit Court.

Mr. Carr: Yes. It is now in the Circuit Court of Appeals. I understand that case is being argued tomorrow, your Honor. [328]

The Court: In view of the fact that it is in the Circuit Court of Appeals, I do not feel that is of much interest at this time.

Mr. Carr: Your Honor fully comprehends my point here?

The Court: Yes.

Mr. Carr: That that is the whole proposition of denying these small industries sugar, except on an historical

base, is in direct violation of an Act of Congress and is, therefore, invalid. And you cannot predicate the prosecution upon a rationing program. In other words, the very Revised Order here—a section is taken from this order—is now insofar as small business is concerned inconsistent with that because it still retains the historical base. In other words, it says to small industry, for example:

“You were not in business last year. You can’t get any sugar at all.”

That is entirely in violation of the Reconversion Act.

Insofar as a business in existence at the moment, a small business plant, the order still provides for the historical basis. And this very account of the West Coast Supply Company, the industrial account, by the very evidence, the fact that it is an industrial account, shows that it must be taken for granted by this court or presumed that it was based on the historical quota and is, therefore, invalid.

Now, that is that phase, your Honor, of the Reconversion [329] Act.

Respecting constitutional problems, I will say this to you very frankly: I argued one point before Judge Mathes, and that was the question of raising these various executive orders. You know, this offense occurred, if it occurred, on July 1st when the OPA act was out of existence and the President had issued his executive order which I think was filed at 10:32 on the morning these checks were written.

So there is one other constitutional point I wish to present at this time. I believe that unless your Honor wants to hear from me on those, since I have already argued, that I will not insist on re-presenting them. But there is one other point I wish to make, and that is that

in view of the present status of the case, the evidence is insufficient as to Ziegler on the checks, on the receiving, and it is insufficient as to the partnership because first a partnership cannot be indicated; it cannot be responsible. Secondly, the receipt of the sugar, insofar as Ziegler is concerned: the whole evidence shows it was received by West Coast Supply Company. There is no evidence that Paul Ziegler is a member of that partnership.

The Court: I feel that I should follow Judge Mathes' ruling, Mr. Carr, in this case in view of the fact that he has already made a ruling on the point that you mentioned.

However, what I am anxious for is that there by a [330] complete record made in this case for both sides, and that is what I am careful about.

Mr. Strong: May I just say one thing, your Honor?

The Court: Yes.

Mr. Strong: I have been following Mr. Carr's reading of the War Mobilization and Reconversion Act, which is 50 United States Code Appendix; and the part that he was reading particularly relating to the basis is contained in Section 1658, at the end of Section 1658 which says:

"Historical Note—Termination of Section, see note under Section 1651 of this Appendix."

Section 1651 of this Appendix has provisions that, to my mind, are entirely inconsistent with the provisions read by Mr. Carr. They are a new statute, enacted as of October 31, 1945; and if they are inconsistent, then they completely displace the matter which was read by Mr. Carr.

Mr. Carr: Which Section? 1656? I don't see the section you are referring to, counsel.

Mr. Strong: On page 326 of the extra part.

Mr. Carr: 326 of what?

Mr. Strong: Of the extra part.

The Court: Examine his book, Mr. Carr.

Mr. Carr: May I, your Honor?

There is an executive order there, Mr. Strong.

Mr. Strong: That's right. [331]

Mr. Carr: Well, I am familiar with that. An executive order cannot override an Act of Congress.

Mr. Strong: I wanted to put that in the report, your Honor, also to point out to your Honor that the provisions read by Mr. Carr are not self-executing; but there is a certain statutory inertia which must be overcome by the act of the Director or the President and that these executive orders which I have pointed to here are the actual guides for everyday action.

The Court: The motions of the defense will be denied and exception allowed.

Mr. Carr: Your Honor, may I just interrupt here? I think my motion specifically stated that I moved on each and every count as to each defendant.

The Court: That is right. It is so understood. Overruled; exception allowed.

Call the jury.

Mr. Strong: May we have a five-minute recess before your Honor calls the jury? Then we won't have to interrupt.

Mr. Carr: Your Honor, do I understand you are overruling as to the partnership?

The Court: Yes.

Mr. Carr: Well, may I just address the court?

The Court: Yes.



Mr. Carr: If your Honor has previously ruled that the [332] evidence is not admissible against the partnership, I respectfully insist that there is no case with which to proceed.

The Court: It has been raised again; so I thought I had the record in shape and made it very clear. The defense has raised it again; so I presumed you wanted to raise the matter again.

Mr. Carr: I do not understand that, your Honor.

The Court: Well, I have excluded the testimony and exhibits here that affected the partnership.

Mr. Carr: That is my understanding. But there is no evidence against the partnership.

The Court: Now I come to the end of the case and find the defense is not satisfied with that and make an additional motion on it.

Is that not what you have done? You have opened it up again.

Mr. Carr: No, I don't think so, your Honor. I merely asked to enter an order of—call it a dismissal, or whatever you want to call it. In other words, I think the appropriate legal step is that some action must be taken by the court now.

The Court: I reserved ruling, and the Government withdrew its motion for a ruling on that very question. Counsel withdrew it; so I did not have anything on which to rule. It was to be without prejudice to the defendant to again present [333] the matter at the conclusion of the case.

Mr. Carr: Very well, your Honor. I believe that is provided for in the new rules.

The Court: Yes, it is.

Mr. Carr: That's right, yes, your Honor.



Mr. Strong: I will withdraw my request for a recess.

The Court: All right, let us get ahead. Call the jury.

Mr. Carr: We are going to start on the defendants' case. Just five minutes, your Honor?

The Court: Well, if both sides feel they want a recess, I suppose the court does not have much discretion in the matter.

(Brief recess.)

The Court: Ex parte matters?

(Brief interruption for other court matters.)

(The following proceedings were had in the presence of the jury:)

The Court: Mr. Carr, do you desire to make an opening statement?

Mr. Carr: At this time, your Honor, I wish to rest the case on behalf of the defendant West Coast Supply Company. I do wish to make an opening statement, your Honor.

The Court: All right.

Mr. Carr: Probably before I do that, your Honor, should the jury be advised that the Government has rested and that [334] certain testimony was stricken?

The Court: Yes. I have a note here.

During the absence of the jury the court struck out the testimony of Benjamin Tingle. You will remember that was the witness who testified very briefly on the witness stand yesterday. He was from the Alcohol Tax Unit.

That testimony has been stricken out, and you are instructed to disregard it.

Is there any other matter to which you want to call the court's attention?

Mr. Carr: Except that I feel it necessary to point out that the case is only opened at this time now insofar as one of the defendants.

The Court: The defense has rested its case as to the West Coast Supply Company, and the testimony now that will be introduced and statements of defense counsel will pertain only to the defendant Paul J. Ziegler. All right.

### OPENING STATEMENT ON BEHALF OF DEFENDANT PAUL J. ZIEGLER

Mr. Carr: May it please the court, ladies and gentlemen of the jury, the purpose of an opening statement, of course, is merely to acquaint you with the theory of the party's case, to let you know what we expect to prove and to acquaint you with our contention. [335]

You have probably gained the idea prior to now that our contention is that there has been no offense committed here by this defendant and that we will so prove.

Before I make that statement, I should like to point up the proposition that this case involves the willful doing of an act, the inhibited act set forth in each count of the information. In other words, there are eight counts that charge that the defendants willfully did certain acts.

We expect to offer proof to show that during last May, 1946, while Congress was debating the OPA extension, whether it should be extended, Mr. Paul Ziegler, who was then a partner of the John H. Ziegler Company and not being a partner of the West Coast Supply Company, began to make efforts to get himself in a position to procure sugar to maintain the operations of his plant.

That particular plant was relatively new but had reached a sizeable capacity and could not operate without

sugar and to maintain that business he had to obtain sugar;

That in May 1946, while Congress was debating whether or not the OPA should be extended, he was trying to keep up with it to see what would happen.

In the meantime he contacted various sugar brokers to find out if, in case the OPA were not extended, he could immediately get the sugar.

We expect to prove, as an ordinary business man, he [236] did not do it by hiding. He did this in the open.

The evidence will show that he had some conversations along in June with various brokers;

That at that time they indicated to him that there was ample sugar to be had; that the warehouses, in fact, were filled with sugar.

So along came June 29th. Mr. Ziegler, we expect to prove, had he wanted to willfully violate the law, would have gone on and obtained sugar prior to that date: July 1st.

And I want to ask you to keep in mind that date: July 1st.

That one June 29th the President vetoed the extension of the OPA. You probably all recall. There was much to-do about it.

On the following day the President went on the radio—on a Sunday, June 30th—and discussed with the people of the country—and Mr. Ziegler heard that program—about the OPA dying, the reason the President had vetoed it and that it could not be extended;

That on that Sunday, having determined in his mind that the OPA was no longer in existence, he felt that he then had a perfect right to go out and get sugar;

That on the following morning, Monday, July the 1st, after having learned of these things, after having watched the Congress worry over that bill, and OPA having terminated by [237] reason of the President's veto, Mr. Ziegler immediately got busy on Monday morning the first thing and called up these brokers and said, "I want that sugar. The OPA is dead."

We expect to show that he transacted this business with these brokers—you have already heard that—and he entered into a purchase arrangement to acquire certain sugar.

The evidence will show that at 10:32 a. m. Washington time an executive order, purporting to continue OPA in existence, was filed.

Under the Federal Register Act that is required to be filed before it brings presumptive knowledge to anyone;

That at that time in the morning, or a few minutes later, Mr. Ziegler was busy at that time, without knowing anything about the executive order, acquiring the sugar.

As a matter of fact, the proof will show that he did not get a copy of that executive order until about three weeks later, two or three weeks later—maybe not three weeks—because the evidence will show that I personally could not find one in town.

I finally came up to the United States Attorney's office, and they did not have one. We waited two or three days, and finally the United States Attorney's office was good enough to let me have a copy of that executive order;

That by the time Mr. Ziegler had received this executive order, which purported to continue the operation of the OPA, [238] the transaction was over; the sugar had been purchased; it had been delivered.